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BIENNIAL REPORT

OF THE

ATTORNEY GENERAL

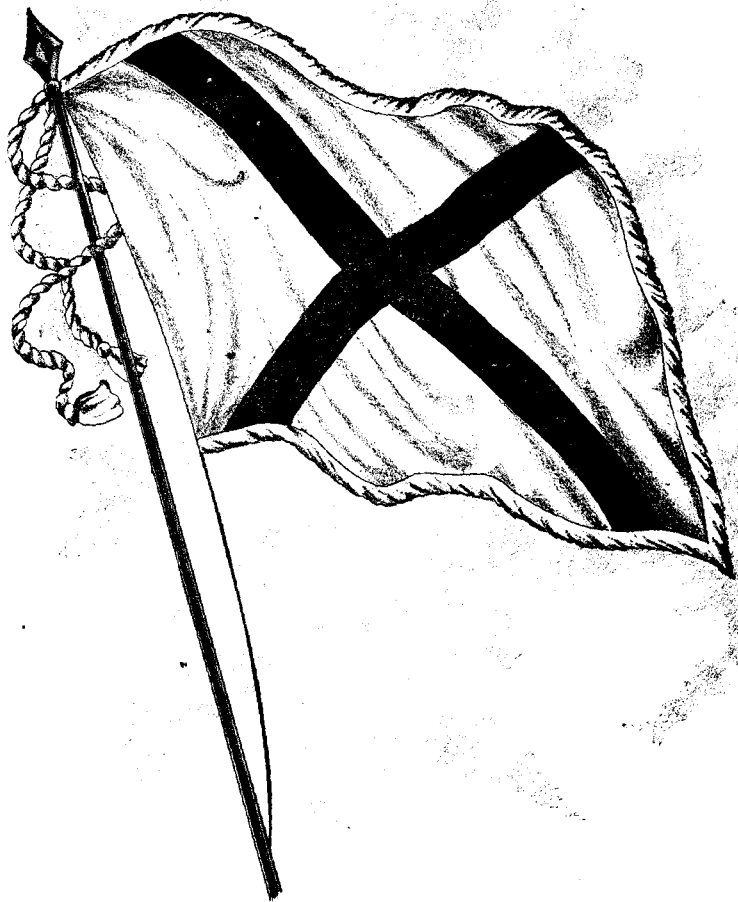
TO THE GOVERNOR OF THE
STATE OF ALABAMA

W. C. ...
1908-1910



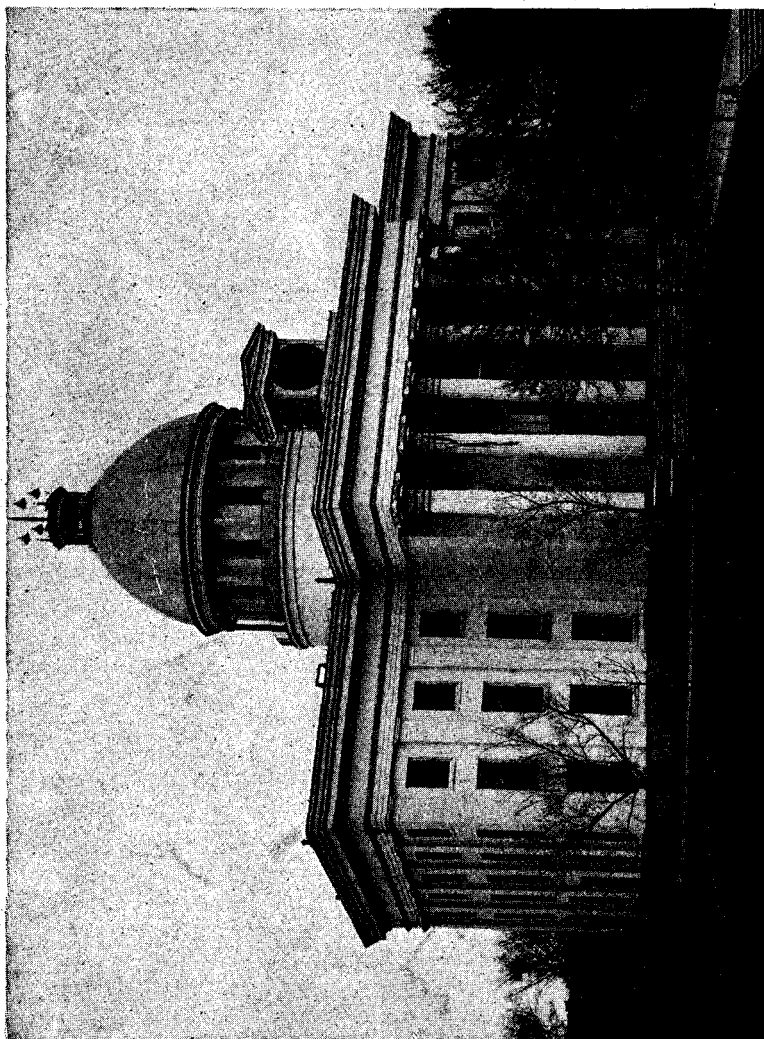
EDWARD BYKES

ALEXANDER M. GARBER
ATTORNEY GENERAL

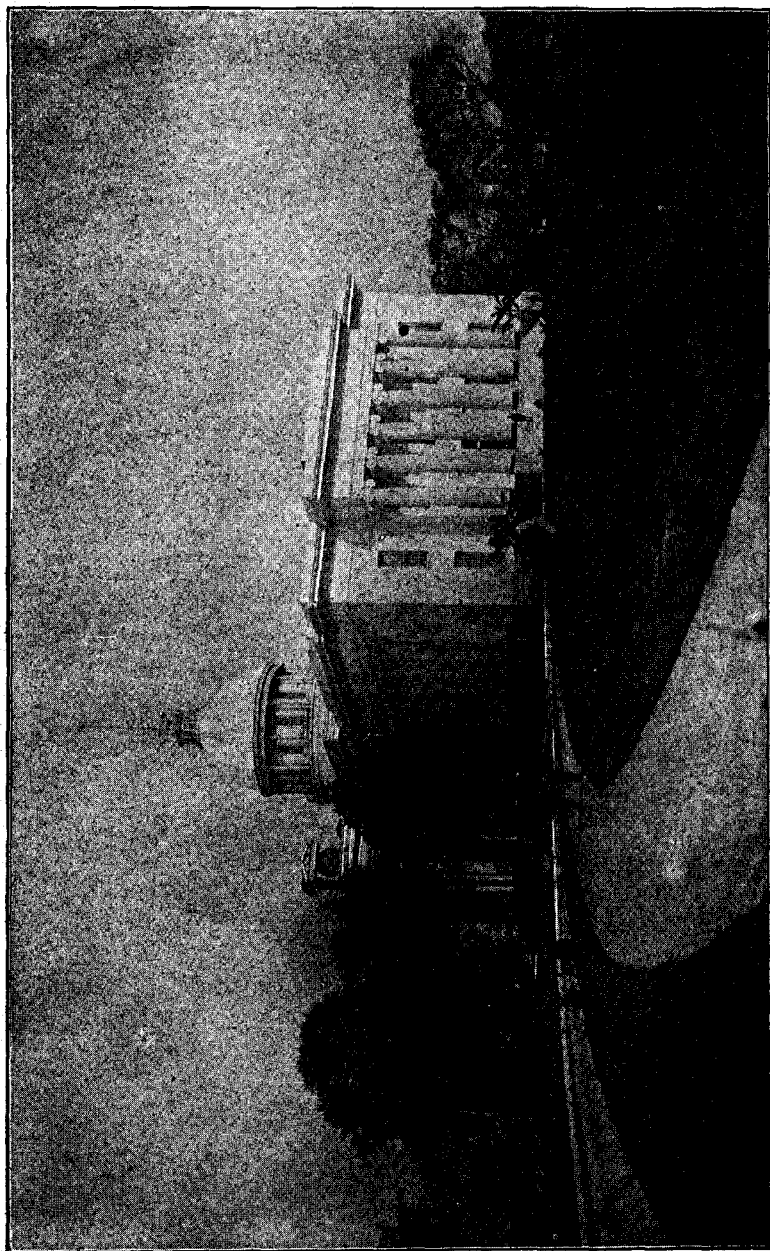


FLAG OF THE STATE OF ALABAMA

Adopted February 16, 1895



CAPITOL.



CAPITOL.
(Showing New South Wing.)

BIENNIAL REPORT
OF THE
ATTORNEY GENERAL

TO THE
GOVERNOR OF THE STATE OF
ALABAMA

FOR THE PERIOD
FROM OCTOBER 1, 1908, TO OCTOBER 1, 1910

ALEXANDER M. GARBER, Attorney General
THOMAS W. MARTIN, Ass't Attorney General

LILLIAN SINGLEY, Secretary & Stenographer

Montgomery, Ala.
The Brown Printing Company,
Printers and Binders,
1910

ATTORNEYS GENERAL OF ALABAMA.

1819 to 1910.

Henry Hitchcock	1819
Thomas White	1823
Constantine Perkins	1825
Peter Martin	1832
Alexander B. Meek	1836
John D. Phelan	1836
Lincoln Clarke	1838
Matthew W. Lindsay	1839
Thomas D. Clarke	1843
William H. Martin	1847
Marion A. Baldwin	1840
John W. A. Sanford	1865
Joshua Morse	1868
John W. A. Sanford	1870
Benjamin Gardner	1872
John W. A. Sanford	1874
Henry C. Tompkins	1878
Thomas N. McClellan	1884
William L. Martin	1889
William C. Fitts	1894
Charles G. Brown	1898
Massey Wilson	1903
Alexander M. Garber	1910

Note: For many years, the law required the Attorney General to act as Solicitor for the Circuit in which the seat of government was located.

LIST OF CIRCUIT, CITY AND COUNTY SOLICITORS.

First Circuit.....Hon. Oscar L. Gray, Butler, Ala.
Second Circuit.....Hon. C. R. Bricken, Luverne, Ala.
Third Circuit.....Hon. Henry B. Steagall, Ozark, Ala.
Fourth Circuit...Hon. J. F. Thompson, Centreville, Ala.
Fifth Circuit.....Hon. W. B. Bowling, Dadeville, Ala.
Sixth Circuit.....Hon. W. B. Oliver, Tuscaloosa, Ala.

(Succeeded by Hon. M. T. Ormond,
Sept. 16, 1910.)

Seventh Circuit.....Hon. B. H. Burr, Talladega, Ala ;
(Succeeded by Hon. Walter S.
Smith, Lineville, Ala., Feb. 1, 1909.)

Eighth Circuit.....Hon. D. C. Almon, Decatur, Ala.
Ninth Circuit...Hon. Richard C. Hunt, Ft. Payne, Ala.
Tenth Circuit...Hon. John McQueen, Birmingham, Ala.
Eleventh Circuit-Hon. R. T. Simpson, Jr. Florence, Ala.
Twelfth Circuit...Hon. Richard H. Parks, Troy, Ala.
Thirteenth Circuit.....Hon. Jas. N. Granade, St. Ste-
phens, Ala.

Fourteenth Circuit.....Hon. W. C. Davis, Jasper, Ala.
Fifteenth Circuit...Hon. D. D. Askew, Wetumpka, Ala.
Sixteenth Circuit-Hon. Geo. W. Darden, Oneonta, Ala.
(Succeeded by Hon. J. A. Embry,
Ashville, Ala., Nov. 18, 1908).

City Court of Andalusia, Hon. L. H. Brassell, Anda-
lusia, Ala.

City Court of Anniston, Hon. W. C. Tunstall, Jr., An-
niston, Ala.

City Court of Bessemer, Hon. Ben F. Perry, Besse-
mer, Ala.

City Court of Gadsden, Hon. W. J. Boykin, Gadsden,
Ala.

City Court of Mobile, Hon. Jas. H. Webb, Mobile, Ala. (Succeeded by Hon. Nicholas E. Stallworth, Mobile, Ala., Nov. 28, 1908.)

City Court of Montgomery, Hon. S. H. Dent, Jr., Montgomery, Ala. (Succeeded by Hon. Philip H. Stern, Montgomery, Ala., Jan. 1, 1909.)

City Court of Selma, Hon. J. F. Thompson, ex officio, Centreville, Ala. Hon. R. H. Mangum, Deputy Solicitor, Selma, Ala.

City Court of Talladega, Hon. Marion H. Sims, Talladega, Ala.

County Court of Clarke, Hon. Q. W. Tucker, Grove Hill, Ala.

County Court of Clay, Hon. E. J. Garrison, Ashland, Ala. (Succeeded by Hon. R. G. Rowland, Ashland, Ala., June 30, 1909.)

Criminal Court of Jefferson County, Hon. H. P. Heflin, Birmingham, Ala.

County Court of Marion, Hon. R. W. Quinn, Hamilton, Ala.

County Court of Pike, Hon. E. R. Brannen, Troy, Ala.

County Court of Sumter, Hon. Jas. A. Mitchell, Livingston, Ala.

County Court of Tuscaloosa, Hon. C. B. Verner, Tuscaloosa, Ala.

Lee County Law and Equity Court, Hon. C. A. L. Samford, Opelika, Ala.

Madison County Law and Equity Court, Hon. Jas. H. Pride, Huntsville, Ala.

Morgan County Law and Equity Court, Hon. L. P. Troup, Decatur, Ala. (Succeeded by Hon. D. F. Greene, Decatur, Ala., Nov. 19, 1908, who was succeeded by Hon. Samuel Blackwell on Dec. 10, 1909.)

Walker County Law and Equity Court, Hon. Sheriff Lacy, Jasper, Ala.

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ATTORNEY GENERAL'S REPORT.

LETTER OF TRANSMITTAL.

STATE OF ALABAMA, OFFICE OF THE ATTORNEY GENERAL.

MONTGOMERY, Ala., October, 1910.

Honorable B. B. Comer,
Governor of Alabama.

Dear Sir:—

In compliance with the provisions of Section 635 of the Code of Alabama, I have the honor to transmit herewith the biennial report of the Attorney General for the period of two years, from October 1st, 1908, to October 1st, 1910.

This report closes the record of my public service as the head of this Department, with the exception of the intervening time between October 1st, 1910 and January 16th, 1911, the date of the expiration of my term of office. In this connection, permit me to call attention to the recommendation made in my biennial report of 1908, that subdivision 5 of section 635 of the Code be amended so as to require the Attorney General to make his report to the Governor in the month of December of each even numbered year, thereby giving him the opportunity to report more nearly at the close of his term of office.

In my last report, your attention was directed to the fact that the volume of business transacted during the biennial period, 1906-08, had greatly exceeded that transacted during any similar period in the history of the State. During the present period, 1908-10, there has been no appreciable diminution in the demands made upon this Department.

The legislation of the extra session of July, 1909, the continuation of the foreign corporation franchise tax litigation to final submission of the cases to the Supreme Court of the United States in December, 1909, the progress of the railroad rate cases before two special masters, appointed under orders of reference by the United States Circuit Court, to take testimony, the examination and approval of titles to property, incident to the selection and establishment of high schools in the various counties of the State, the injunctive litigation, instituted by several foreign corporations in the federal court, attacking the validity of section 3654 of the Code, which prohibits and penalizes the removal by a foreign corporation of a case from a state to a federal court, attention to the usual business, including a considerable amount of litigation, pertaining to matters arising in the customary conduct of the affairs of the different State executive departments, the duties required of the Attorney General as a member of five State Boards and the many important cases, of both a criminal and civil nature before the Supreme Court—afford a record of work, in quantity and in importance, fully equal to that shown in my letter of transmittal to you of October, 1908, submitting my first report.

The four years just now passing into history will be regarded, by the impartial student of Alabama's governmental development, as the period most constructive and progressive in legislation, and the most aggressive

in the divorcement from former conditions and in the establishment of a new regime whose basic principle has been the assertion of the general interests of the people. On the whole, after allowing due rebate for any legislation, which has proven or may prove unwise or too advanced or progressive for existing conditions, the net result will be both beneficent and beneficial to the people of Alabama. This aggressive and constructive spirit, which has dominated and guided this quadrennial administration, is reflected in the enactment of many laws—covering almost every popular subject of legislation—which are grounded in the general welfare and advancement of the body politic. Indeed, its legislative chronicle evinces the high standard of action and the catholic, generous purpose of the law-makers of Alabama during this period.

All of this has resulted in broadening the scope of the activities and the usefulness of many executive offices, state and county, and in a large measure accounts for the increase in the volume of business of this office.

This report contains:

First—(A) A general review of the work of the Department for the past two years relating to matters of more special public interest, and including the more important litigation in which the State, through her official representatives, has been engaged. (B) Recommendations suggested by experience in the conduct of the affairs of the office.

Second—(A) A statement of all civil suits and claims in which the State is concerned.

(B) A statement of several quasi criminal cases and several other criminal cases of general importance.

Third—(A) A tabulated statement showing the number and character of criminal cases disposed of in the entire State for the period of two years covered by this report, as consolidated from reports of solicitors; the number of convictions, acquittals, *nolle prosequies* and abatements; the number of sentences to death, to the penitentiary, to hard labor for the county, and to jail; the number of fines imposed and secured and the number committed to the State Reformatory.

(B) Tabulated statements showing the number and character of criminal cases disposed of in each judicial circuit and in each city or criminal court or other court having a separate solicitor, and the number of convictions, acquittals, sentences, etc., in each, as in the general statement, so as to show the work of each solicitor separately.

Fourth—Official opinions of the Attorney General rendered during the past two years which he deems of general public interest.

GENERAL REVIEW OF THE WORK FOR THE TWO YEARS.

The last report of the Attorney General for the years 1906-08 called attention to the greatly increased volume of business which is now transacted by this Department, and in this report it is only necessary to add that during the last two years, 1908-10, the volume of work that the Department has been called upon to perform has increased rather than diminished. In commenting upon the marked growth of its business. I enumerated, at that time, the following, as among the contributing causes: "two sessions of the Legislature; the enactment of various laws establishing additional State Boards, Commissions and Departments; the adoption of a new Code, material changes in the school laws; the passage of the "Municipal Code" Act, and the general prohibition law of 1907; the natural growth of business in the several Executive Departments and before the Supreme Court; and the effort of the Legislature—probably for the first time in its history—to enact statutes, unfettered and unhampered, seeking the reasonable control and regulation of foreign corporations, and common carriers transacting intra-state business in Alabama."

In addition to the quota of work incident to the extra session of the Legislature of 1909, the routine business of the Department, with the unusual amount of pending

litigation, more than sufficed for the absence of the great number of statutes which were submitted during the period, 1906-08, to be reviewed and construed.

Many laws have been enacted at the several sessions of the Legislature during the quadrennial period, which have required an interpretation by the Attorney General and several of which have resulted in complex and stubborn litigation. The school laws, involving numerous opinions, an examination of abstracts of titles to school lands, opinions covering a variety of questions and rendered to all branches of the Executive Department, the State institutions and to all Boards and Officers of the State Government entitled to the advice of the Attorney General, the Railroad Rate Litigation, the franchise tax cases, the cases involving the privilege tax on domestic corporations, many minor civil cases and numerous criminal cases, including those attacking the prohibition laws, appealed to the Supreme Court, establish the measure of the activities of the office force of the law department during my incumbency. During this time the Railroad Commission was charged with various new duties and clothed with extensive powers. The State Tax Commission was established, consisting of a chairman and two associate members, and comprehensive powers were given to the Commission in the supervision and equalization of tax assessments. A law was enacted imposing an intangible franchise tax upon certain corporations. There were also established the department of the Inspection of Jails, Alms-houses and Cotton Factories; the department of the State Game and Fish Commission; the Bureau of Cotton Statistics; the Alabama State Sanatorium; the Board of Pharmacy; the Live Stock Sanitary Board; the State Board of Medical Examiners; State Bank Depositaries and the State Text-book Commission. Laws relating to appropriations,

child labor, corporations, delinquent children, elections, municipal government, prohibition, schools, public health, taxation, railroads, insurance, general qualification of jurors and negotiable instruments, were changed in many important respects or new statutes enacted.

It has become necessary during much of the current period, for the proper dispatch of the business of the Department, to employ additional services under section 562 of the Code. In view of the present volume of business and the prospect of no material decrease therein, I feel justified in recommending that the next Legislature increase the force of this Department by providing for the appointment of a second assistant to the Attorney General, both assistants to receive adequate compensation, and with a provision that both be required to reside in Montgomery and maintain offices in this Department during their State service.

CASES INVOLVING THE VALIDITY OF THE "PRIVILEGE TAX" ON RECORDED MORTGAGES, ETC.

There have been no new litigated cases since my last report, arising under the statute providing for this source of revenue. The Board of Compromise is called upon to consider many instruments with respect to their liability to the payment of this tax under the general authority of the Board as prescribed in section 2441 of the Code. There has been uniformly, up to this time, general acquiescence in its decrees under this statute. The Board is also frequently required to exercise its authority under subdivision G of section 2082 of the

Code, in those cases in which the mortgage or deed of trust embraces property located in several States.

It will be sufficient to close the discussion of this subject with the statement contained in my former report.

The Act of 1903, amending subdivision 7 of section 3911 of the Code of 1896, first established the system of taxing recorded instruments. It imposed a privilege tax on recored mortgages of fifteen cents on every one hundred dollars of indebtedness secured, and provided that there should be no other tax collected upon any such instrument on which the tax prescribed by the act shall have been paid. The Supreme Court had occasion to construe this statute in the case of *Barnes v. Moragne*, 41 So. 947. It was there held that the Act of 1903, imposing a privilege tax on recorded mortgages, operated to *repeal* subdivision 7 of section 3911 of the Code of 1896, imposing an *ad valorem* tax on solvent credits. Under this decision, a large amount, something over sixty thousand dollars, paid for taxes on solvent credits, was refunded to tax payers. On March 4, 1907, by a separate Act, solvent credits were again made taxable. And by the Revenue Act of March 7, 1907, subdivision 7 of section 3911 of the Code of 1896, as amended by the Act of March 4, 1903, was again amended. Both acts have since been codified in the Code of 1907.

The record mortgage law as it now stands contains several new features. Contracts of conditional sale are now made subject to the privilege tax, as are also extension or renewal contracts; and when any instrument liable for this tax embraces property both in this and other States, the State Board of Compromise is clothed with authority to ascertain the proportion of the indebtedness secured by the instrument upon which the tax shall be paid. These additional provisions have ren-

dered the present law far more effective, still it is not yet framed to meet properly and equitably many cases which arise as the result of the progressive business methods of modern finance.

RAILROAD RATE LITIGATION.

A brief synopsis of the railroad rate cases pending in the Circuit Court of the United States for the Middle District of Alabama, will be found elsewhere in this report, under subdivision II-A.

The bills in the cases were filed to restrain the enforcement of certain passenger and freight rate statutes and several other statutes regulating railroads, enacted by the Legislature of Alabama in 1907, upon the claim that they were confiscatory in their effect upon the property of the railroad companies, and also that the statutes denied the railroad companies the equal protection of the laws. There were twelve (12) Complainant Railroad Companies to file suit at the beginning of the litigation. Subsequently the Central Trust Company of New York filed a bill against the Central of Georgia Railway Company to restrain that company from putting the rates into effect, and also to restrain other defendants in the same way that similar defendants were sought to be restrained by the bills of the railroad companies.

Adjustment and compromise were effected in seven of the cases, leaving unsettled and still contested the suits instituted by the Western Railway of Alabama, Central of Georgia Railway Company, South & North Alabama Railroad Company, Nashville, Chattanooga & St. Louis Railway, Louisville & Nashville Railroad

Company, and the Central Trust Company of New York.

Restraining orders were made in all of the cases of the railroad companies on the 30th of March, 1907, and on the 2nd of December, 1907, and in the case of the Central Trust Co. of New York on the 27th of November, 1907, to remain in force until the determination or the Complainant's motion for interlocutory injunctions.

The interlocutory order of the Judge of the United States Circuit Court was made and entered in each of the six contested cases on April 20th, 1908, by which the complainants were awarded injunctions, *pendente lite*, against the respondents, the Railroad Commission of Alabama et al., as prayed in the supplemental bills. The effect of the court's decree was (1) to restrain the enforcement of the passenger and freight rate statutes and other statutes referred to in its decree, (2) to enjoin the Solicitors, Sheriffs, and Clerks, and certain named persons, as passengers and shippers and all other shippers and passengers, (3) and to restrain the members of the Railroad Commission from reducing any passenger or freight rate below that charged by the several railroad companies between points in the State of Alabama on March 25, 1907, the date of the commencement of the original suits.

The members of the Railroad Commission and the Attorney General were not enjoined by the order of the court from enforcing the statutory passenger and freight rates, for the reason that the Legislature enacted at its special session a statute, approved Nov. 23, 1907, excluding from the Railroad Commission and the Attorney General all power, authority or duty to enforce any rates, fares or charges for the transportation of property or passengers, prescribed by the statute.

Appeals were prosecuted by the State to the United States Circuit Court of Appeals for the Fifth Circuit, on May 19, 1908, from the interlocutory orders of the Circuit Court granting the injunctions, *pendente lite*. On March 16 and 17, 1909, these cases were argued before the Court of Appeals in New Orleans and elaborate briefs filed by both sides. An array of able counsel appeared on behalf of the railroads. The two points of main insistence by the Attorney General and associate counsel on behalf of the appellants, the Railroad Commission et al., were, viz: (1) That the action of a railroad commission in reducing or fixing freight and passenger rates is legislative in its character, and that such action may not be overruled by injunction whatever may be the right of a common carrier to restrain the enforcement of the rates after they have been established, and (2) that the showing made by the complainants, by the allegations of their bills and by their affidavits, of the effect upon the revenues of the railroads, by reason of the enforcement of the statutory rates, or any of them, was insufficient and, therefore, under settled principles of law, the Circuit Court was not justified or authorized to restrain the enforcement of the 21½ cent passenger rate act and the eight group acts, or any of them. These appeals resulted in a victory for the State, the United States Circuit Court of Appeals handing down on April 5, 1909, an opinion sustaining our contentions, reversing and annulling each of the decrees of the Circuit Court and dissolving the injunctions issued on each decree, and remanding each cause to the Circuit Court for further proceedings in conformity with the opinion of the Circuit Court of Appeals.

At the beginning of these cases the Governor employed the following special counsel to assist the Attorney General under the authority given him in section 52 of

the Act creating the Railroad Commission (Gen. Acts 1907, p. 165): Messrs. Samuel D. Weakley, H. C. Selheimer, Horace Stringfellow, Frank S. White and R. W. Walker. Subsequently Judge Weakley and Mr. Selheimer were the only counsel retained to assist the Attorney General in the further progress of the cases; and whatever success has thus far resulted to the State in this litigation is due in great measure to the diligent and effective work of these gentlemen.

After an unsuccessful effort to carry the decision of the Court of Appeals to the United States Supreme Court by writ of certiorari, the contesting railroads, on June 1, 1909, put the statutory rates complained of into effect, pending the taking of testimony to determine whether or not they were confiscatory. The taking of testimony, which has assumed the widest range on all questions involved, was begun early in January, 1910, and has continued throughout the entire year, and the testimony, in all of the cases except the Western Ry. of Alabama, is ready for submission to the Special Masters appointed by the Court for the determination of certain facts required to be ascertained and reported by them, as soon as briefs are prepared by counsel.

The taking of testimony has consumed the entire time of special counsel for the State, Hon. Samuel D. Weakley and Hon. Henry C. Selheimer; and the Attorney General has devoted to it a considerable portion of his attention, all that was consistent and possible with his numerous other duties.

Almost coincident with the enactment of the statutes prescribing the rates complained of, a general business and industrial depression, known as the panic of 1907, came upon the country. The effect of this panic was peculiarly severe on all railroads and resulted in a large reduction in their operating revenues. These changed

conditions, following what had been a period of unprecedented prosperity for the railroads of the entire country, including those engaged in contesting the validity of these statutory rates, may have caused some doubt in the minds of friends of rate regulation as to the wisdom or policy of attempting to enforce the statutory rates. But conditions again changed, pending the appeal of these cases by the State to the Circuit Court of Appeals, and by the time the decision on the appeal was rendered, reversing the lower court and dissolving all injunctions against the State rates, the volume of railroad traffic was almost as great as it was in the most prosperous years. This increase in traffic, combined with wise economies in operation and management taught by the panic, made the net earnings from all business in Alabama of the railroads contesting the statutory rates *greater* for the fiscal year ending June 30, 1909, than they had ever been for any year in the history of the roads. Since the putting into effect of the rates complained of, the net earnings of the contesting railroads have continued to increase with the result that for the fiscal year ending June 30, 1910, *during which period the statutory rates were in force, the net earnings from all business were much greater than they had been for the year ending June 30, 1909.* Certainly, so far as concerns the net earnings from all business in Alabama, these roads have not felt any injurious effect resulting from the alleged confiscatory rates complained of.

And yet in May, 1909, pending the decision of the Supreme Court of the United States on petitions for writs of certiorari, presecuted by the contesting railroads, seeking a review of the decision of the Circuit Court of Appeals, it was stated by partial adherents of the contesting roads that six months of the Alabama

statutory rates would bankrupt the roads. The statutory rates have been in effect now for 18 months, with the general results above named.

Upon considerations of a general beneficial character, the Attorney General, with whom the special counsel for the State have agreed, has been in favor of adjusting and settling these cases on any fair and reasonable basis, so long as the State was not asked to give up or surrender the integrity of her original position, in regard to the regulation of the intra-state business of the common carriers transacting such business in Alabama, and as defined in the statutes of the State, enacted for such purpose.

The affirmation, by the United States Circuit Court of Appeals, of the delegated authority conferred by statute upon the Railroad Commission in the matter of rate making, to meet changed conditions, renders such an adjustment feasible and practicable in every instance. No further legislation is needed. This recognized power of the Railroad Commission of Alabama, intelligently and reasonably exercised, is ample to meet and settle every possible difference that has arisen or may arise concerning the reasonableness or compensatory character of Alabama's statutory rates.

The strongest reason for an adjustment of these cases, applicable alike to both sides of the controversy, lies in the fact that the paramount question of contention revolves around the difference in expert opinion concerning the arbitrary apportionment of a large part of the operating expenses between intra-state and inter-state business. The courts have heretofore, in rate cases, adopted methods or bases, more or less theoretical and illusory in the division of these expenses, and they must, by the very practical indivisible and inseparable nature of such expenses, continue to adopt such arbitrary as-

signment of the operating expenses between the two classes of business, according to their temperament or peculiar point of view.

In my opinion, these cases are beyond all question, the most important in which the State has ever been engaged. They involve all the problems of the State's control and regulation of the intra-state rates of the common carriers doing business in Alabama. It is difficult to determine or to suggest to what extent the continued contest of the railroads, engaged in this litigation, under existing conditions, is due to an inherent unwillingness to submit to State regulation.

FRANCHISE TAX ON FOREIGN CORPORATIONS.

I referred at length in my last report to the litigation arising under the Act of March 7, 1907, subsequently codified in the Code of 1907, as sections 2391 to 2399, inclusive, requiring foreign corporations authorized to do business in this State, to pay an annual franchise tax. At that time, these cases had been advanced on the docket of the United States Supreme Court on motion of the Attorney General in order to secure a decision by that court before it became necessary for the foreign corporations to pay this tax for the year 1910. The validity of this statute was assailed by the Southern Railway Co., Central of Georgia Railway Co., the Seaboard Air Line, through Warfield et al., Receivers, the Louisville & Nashville R. R. Co., the Atlantic Coast Line Railway Co. and the Nashville, Chattanooga & St. L. Railway. The State prevailed in the Supreme Court of Alabama, (*So. Ry. Co. v. Greene*, 49 So. 404). The appeals prosecuted by the railroad companies to the Unit-

ed States Supreme Court were finally argued on December 16th, 1909, and elaborate briefs were filed by counsel representing both the railroads and the State. There were various questions presented by the records in these cases. The argument most strongly pressed and relied upon by the railroad companies was predicated on that provision of the Fourteenth Amendment to the Federal Constitution which prohibits a State from denying to any person within its jurisdiction the equal protection of the laws. In short, it was urged that a statute enacted in obedience to section 229 of the Constitution, adopting one basis for a franchise tax for domestic corporations, and the passage of a law in compliance with section 232 of the Constitution prescribing another and more burdensome basis for foreign corporations, was violative of the 14th Amendment to the Federal Constitution. The State contended on the other hand that the statute was valid and constitutional; that it operated upon a wholly different subject of taxation than the statute imposing a tax on domestic corporations, and that it was not a denial of the equal protection of the laws to impose on a foreign corporation an annual tax for the privilege of doing business in the taxing State, when no such tax or a tax of a different amount, was imposed on domestic corporations engaged in like business.

The Supreme Court of the United States sustained the contention of the railroads, holding the provisions of the Act of March 7, 1907, repugnant to the Constitution of the United States and void as applicable to appellant corporations.—*So. Ry. Co. v. Greene*, 216 U. S. 400, and companion cases reported in the same volume. The Court held that these cases did not involve determining how far a State may arbitrarily exclude a foreign corporation, but to what extent a State, after al-

lowing a foreign corporation to come in and acquire property, may tax such foreign corporation which has lawfully acquired vested property interests therein, of a permanent and valuable nature, by a discriminating method not employed as to domestic corporations of the same kind, carrying on precisely the same business. On this point, the Court declared that the franchise tax imposed upon such foreign corporations, under the provisions of the statute, by a different and more onerous rule than that used in taxing domestic corporations for the same privilege, both taxes being upon the same species of property or subjects of taxation, constituted a denial of the equal protection of the laws, and was in conflict with the Fourteenth Amendment to the Constitution of the United States.

I have discussed the effect of this decision of the Supreme Court in an opinion delivered to the State Auditor on September 30th, 1910. See page 156 of this report. Further reference to these cases will also be found under subdivision II-A of this report.

As a result of the decision of the Supreme Court in this litigation, it will be necessary for the Legislature to enact, at an early date, a new statute providing for the payment of a franchise tax by domestic corporations and foreign corporations under sections 229 and 232 of the Constitution, respectively, which will conform to the principles announced in the case of *So. Ry. v. Greene*, *supra*.

The amount of this tax for the years 1908 and 1909 was refunded to the foreign railroad corporations engaged in this litigation, following the decision of the cases by the United States Supreme Court. There was a large number of foreign corporations similarly situated to those instituting these suits, who paid this tax with-

out protest. The State Auditor in his recent report has recommended that the Legislature pass an Act authorizing the refund of this tax to these non-contesting corporations. I consider his recommendation in this respect based upon equity and I think it should be adopted.

NEW STATUTES CONSTRUED BY THE SUPREME COURT.

Several of the recent statutes, enacted by the Legislature at its general session and the special sessions of 1907 and 1909, have been construed or declared unconstitutional. In a majority of the cases the statutes which have been held unconstitutional were local acts and therefore of no special interest to the State at large, and will not be discussed. A brief review of the general statutes, which have been declared invalid by the Supreme Court, will be given, and also a review of some of the cases construing laws recently enacted.

STATUTES DECLARED VOID.

In the case of *Tyler vs. State*, 48 So. Rep. 672, the Act of November 23, 1907, commonly known as the "John's Pistol Law," was pronounced unconstitutional on account of the failure of the Senate Journal to show a compliance with section 62 of the Constitution.

In the case of *State vs. Miller*, 48 So. Rep. 496, section 120 of the Municipal Code Act, dealing with the county road and bridge tax, was discussed at length and held unconstitutional. See also the case of *Anniston vs. Court of Co. Com'rs*, 48 So. Rep. 605.

The Act of November 23, 1907, which undertook to repeal the Act of March 12, 1907, defining delinquent

children, etc., was considered in the case of *State vs. Smith*, 50 So. Rep. 364. The Court declared it a nullity, because it was passed in violation of section 62 of the Constitution, it having been referred in the Senate to one committee and having been reported back by a different committee, with no action shown by the committee to which it was originally referred. This left the Act of March 12, 1907, in effect, in its entirety, until certain parts thereof, as codified in the Code, were amended and modified by the Act of August 25, 1909 (Acts Special Session 1909, p. 117).

STATUTES CONSTRUED.

The case of *Walker vs. State*, 51 So. Rep. 357, discusses the Act of the Special Session of 1907, Gen. Acts. 1907 (Spec. Sess.), p. 190, and holds that this Act does not increase the jurisdiction of justices of the peace, nor does it give them final jurisdiction to dispose of prohibition cases.

In *Ex parte Hill*, 51 So. Rep. 786, in construing the Act of August 25, 1909, Acts 1909 (Spec. Sess.) 279, the Court held that unincorporated associations that issue insurance policies are suable in this State in their associated names.

In the cases of the State *ex rel. Woodward v. Skeggs*, (154 Ala. 249) and *State ex rel. Collman v. Pitts*, (160 Ala. 133), the statewide prohibition law enacted at the Special Session of 1907, was held valid in elaborate opinions by the Supreme Court as against numerous attacks. See also *Marks v. State*, 48 So. Repr. 864. (Further reference is made to these cases in II-B of this report.)

The Act of November 23rd, 1907, (Gen. Acts Spec. Sess. 1907, p. 189), regulating prosecutions for violations of the prohibition laws and dispensing with indictments in certain prohibition cases was considered in the case of State ex rel. Nash v. Semmes, 50 So. Repr. 120, and held valid.

The Supreme Court has construed a number of Acts involving the prohibition laws. Some of these cases will be reviewed under II-B of this report.

TITLES TO PROPERTY CONVEYED TO STATE FOR HIGH SCHOOLS.

Under section 9 of an Act "To provide for the establishment of High Schools in this State and to make appropriations for said schools," approved August 7, 1907, the annual appropriations made therein for the maintenance of high schools, by decision of the Governor, became operative on October 1st, 1908. Since the passage of the Act, 32 sites, in as many counties of the State, have been selected for high schools by the Governor, Auditor and Superintendent of Education, who constitute the Commission for the location of such schools.

The provisions of the Act require the citizens of a county who desire the location, establishment and maintenance of a county high school, to execute a deed to a suitable lot consisting of not less than five acres of land, to the State of Alabama, the cost of which, with building and equipments, to be not less than \$5,000.00.

The approval, by the Attorney General, of deeds to this property and of the abstracts of the titles to the property conveyed, was deemed necessary for the protection of the interest of the State, and in pursuance of

this plan, the State Superintendent of Education directed the citizens of each county to furnish an abstract of title, approved by a reputable attorney of the county in which the high school was to be erected. The Attorney General then examined such abstract and officially advised the State Superintendent of the result of his examination. In many cases the approval of the title was unavoidably delayed, as in nearly all of the abstracts, it was difficult to obtain a record title from the Government's patent down to the present time. Frequently extensive correspondence passed between this office and parties in the county interested in the high school before sufficient data was obtained to warrant the approval of the title. Since the passage of this Act, the citizens of 32 counties in the State have availed themselves of the benefits thereof and the Attorney General has approved the title to the property conveyed in each instance.

IMPEACHMENT CASES.

Articles of impeachment have been instituted in the Supreme Court by the Attorney General in two cases against sheriffs of the State during the period covered by this report. The Supreme Court exercised, in both proceedings, original jurisdiction as prescribed by the Constitution and statutes of Alabama. In each case, there arose for construction, for the first time, by the Supreme Court, provisions in the present organic law of the State wherein that instrument differed from the Constitution of 1875.

In the case of the State ex rel. Garber, Attorney General, v. Cazalas, Sheriff, 162 Ala. 210, the proceedings were instituted before the Supreme Court, pursuant to

the direction of the Governor, and charged the sheriff of Mobile County with impeachable neglect in allowing a negro prisoner held by him in the county jail to be taken therefrom and put to death by a party of masked men. The case involved the interpretation of section 138 of the Constitution of 1901, which is a new constitutional provision and provides that "whenever any prisoner is taken from jail, or from the custody of any sheriff or his deputy, and put to death or suffers grievous bodily harm, owing to the neglect, connivance, cowardice, or other grave fault of the sheriff, such sheriff may be impeached under section 174 of this Constitution."

The Constitution of 1875, Article VII, sections 1 to 3, predicated impeachable conduct of this character upon *willful neglect*. It was clear that the framers of the new Constitution, in the employment of the simple, unqualified word, "neglect," intended to place a higher degree of care and responsibility upon this officer. Such construction was urged by the Attorney General, and the Supreme Court, upon the evidence adduced in the case, ordered the removal of Cazalas from the office of sheriff of Mobile County, in an able opinion by Mr. Justice Simpson. The court carried out the manifest purpose of the framers of the Constitution and construed the word, "neglect," in the sense of imposing upon the sheriff the strictest accountability for the safety of the persons committed to his care. The effect of this decision, imposing this extreme responsibility upon the sheriff in the protection of prisoners, has been most salutary. It is safe to assert that never again will the annals of Alabama record another case of like character.

In the case of the State of Alabama ex. rel. Garber, Attorney General, v. Edgar E. Latham, Sheriff, (case not yet reported), the articles of impeachment were in-

stituted in the Supreme Court by the Attorney General upon the recommendation of the grand jury of Tuscaloosa county. The charge against the defendant was based on the following provision of section 173 of the Constitution of 1901: "Intemperance in the use of intoxicating liquors or narcotics to such an extent, in view of the dignity of the office and importance of its duties, as unfits the officer for the discharge of such duties." The words quoted from the present Constitution were substituted for the words "habitual drunkenness" in section 1 of Article VII of the Constitution of 1875. This change in the Constitution of 1901 followed as the result of the opinion of the Supreme Court in the case of the State ex rel. Attorney General v. Robinson, 111 Ala. 482.

The evidence failed to sustain the charge and the defendant was discharged. The court, however, declared without hesitation that the new Constitution prescribed a more exacting rule of conduct for a public officer than that defined by the words "habitual drunkenness," found in the old Constitution, adding that, although a sheriff may have been wise enough to select competent deputies, yet if he has so intemperately used intoxicating liquors or narcotics as to bring himself into that condition which brings into disrepute the administration of the high office which he holds, or presents before the people a man so debauched by drugs or liquors as to be unfit to discharge the duties of his office, he should be impeached.

CRIMINAL CASES.

Under the present system of collecting criminal statistics, as suggested in my last report, the figures are substantially complete only with respect to the higher grade of offenses, included under felonies. The solicitor of every court in the State exercising jurisdiction in such cases, is required to make reports to this office of all cases disposed of by him. While there has been a general compliance with this law on the part of the solicitors, full reports have not been obtainable from two of the Circuit Court solicitors for this period. This was also true as to several solicitors for the 1906-08 period. With the exception of this small per cent. of unreported felonies, the statistics given in this report and those recored in my first report in felony and penitentiary cases afford accurate data. Owing to persistent effort during the four years, it is my opinion that these statistics are more nearly complete than for some years past.

Some solicitors of courts whose jurisdiction is limited to the trial of misdemeanor cases report also to this office. The offenses of this class reported by them and by the Circuit and City Court solicitors embrace *all the misdemeanors* included in this report. On the other hand, there are a number of county solicitors and deputy solicitors, prosecuting for the State in inferior courts, who are not required under the present statute to render reports to the Attorney General. Through this source many cases of the misdemeanor class, approximating several thousand during a biennial term, escape this record.

It is a difficult and tedious task on the part of both the Solicitors and the Attorney General to record, file

and compile these cases, but since it affords important data and is required by law, I think that all solicitors, regardless of their character or the court in which they represent the State, for the purpose of securing complete data, should be required to report to this Department, and the statute should be amended so as to accomplish this result. I further suggest, as a means of securing accurate and complete criminal statements, that the law on this subject should be amended by a provision making it the duty of the clerk of every criminal court to prepare an alphabetical statement of all criminal cases disposed of by his court promptly at the end of each term of court (for which a reasonable compensation might be allowed), and providing also that it shall be the duty of the solicitor to approve such statement and to transmit the same by registered mail to the Attorney General, and subjecting this official to a penalty for failing to discharge such duty on or before the 10th of the month next following the adjournment of each term of his court.

Some measure of this sort should be adopted, if it is deemed important or desirable that the compilation of the criminal statistics contained in the report of the Attorney General should represent accuracy and completeness.

In the entire State for the two years ending September 30, 1910, the general tabulated statement (III-A of this report) records the disposition of 20,066 criminal cases, a decrease of 606 cases from the total for the two years ending September 30, 1908. This statement shows that the aggregate of 20,066 cases disposed of, were distributed as follows:

Convictions	9,493
Acquittals	2,891
Noll prosequies	6,132
Abated or withdrawn	1,550

(A decrease of 2,440 in convictions as compared with the 1906-08 period.)

In the 9,493 convictions, the sentences were distributed as follows :

Death	27
Penitentiary	1,331
Hard labor	2,516
Jail	1,795
Fines imposed or secured	5,165

(Two forms of punishment were imposed in 341 cases.)

So far as shown by the reports of the solicitors filed in this office, there was one committal of a youth charged with rape to the Alabama Industrial School, and also one committal to the Insane Hospital.

From an examination of former biennial reports of the Attorney General, it will be observed that the number of criminal cases recorded for the four years from October 1st, 1906, to October 1st, 1910, in the two reports issued during my term, is far in excess of the number reported during any previous four year period. The total number for the four years ending September 30, 1910, was 40,738, while the total number for the four years ending September 30, 1906, was 25,190, an increase of 15,548 for the four years ending September 30, 1910, (or 38 per cent. increase). After a careful analysis and study of all the conditions which may affect criminol-

ogy in Alabama, it is my judgment that the chief causes of the marked increase in the criminal offenses *reported* during the past four years, are, more complete reports by solicitors to this office, the increase in the population of the State, the greater vigilance of grand juries, the activity of prosecuting officers, the results flowing from the fee system, the establishment of new courts and the enactment of new laws.

There was a misconception with regard to the time covered by my first report, which dealt with the period from October 1st, 1906, to October 1st, 1908. The decided increase of 7,056 in the number of reported criminal cases for this period as compared with the next preceding period (1904-06) was assigned by some, in the public discussion on the subject, to the influence of the recent prohibition laws. This increase occurred, however, during fifteen months before the enactment of the statewide prohibition laws and during nine months subsequent to their operation, (January 1st, 1908 to October 1st, 1908). This contention, therefore, is illogical and erroneous, especially in the face of a decrease of crime reported for the present period (1908-1910), during all of which time the prohibition laws were in force. Moreover, it is probable that the decrease mentioned would have been still greater but for the frequent practice, evidently adopted in the trial courts, of instituting a number of prosecutions under the prohibition laws against the same defendant, and, upon a conviction in one or more cases, dismissing the remaining ones. The large increase in nolle prosequies and abatements—1,687 for this period—is persuasive, if not conclusive, on this point.

**THE NUMBER OF CRIMINAL CASES DISPOSED
OF IN THE STATE DURING THE 26 YEARS
FROM OCTOBER 1, 1884, TO OCTOBER
1, 1910, IS AS FOLLOWS:**

For 2 years ending Sept. 30, 1886	11,011
For two years ending Sept. 30, 1888 (2 Circuits not reported) --	8,572
For 2 years ending Sept. 30, 1890	12,794
For two years ending Sept. 30, 1892 (1 Circuit not reported each year)	12,453
For 2 years ending Sept. 30, 1894	11,694
For 2 years ending Sept. 30, 1896	12,118
For 2 years ending Sept. 30, 1898	11,210
For 2 years ending Sept. 30, 1900	10,215
For 2 years ending Sept. 30, 1902	13,388
For 2 years ending Sept. 30, 1904	11,574
For 2 years ending Sept. 30, 1906	13,616
For 2 years ending Sept. 30, 1908	20,672
For 2 years ending Sept. 30, 1910	20,066

During this biennnial period ending Sept. 30, 1910, there were 630 cases of homicide disposed of in the State; of this number there were 121 convictions for murder in the first degree; 153 for murder in the second degree; 100 for manslaughter in the first degree, and 18 for manslaughter in the second degree. In 238 cases no convictions were secured. The general percentage of convictions in homicide cases, including all degrees, was 62½. For the previous period, 1906-08, it was 81.

From October 1st, 1908, to October 1st, 1910, 355 convicts were received at the State penitentiary, sentenced for murder in the first degree, murder in the second de-

gree and manslaughter in the first degree. Manslaughter in the second degree not being a felony, persons convicted of this crime were not sentenced to the penitentiary. Of this number 80 were white and 275 were negroes. That is 77 per cent. of the State homicide convicts for the two years were negroes and 23 per cent. were whites. The census of 1910, as unofficially announced, gives Alabama a total population of 2,138,093, an increase of 309,396. The division between the two races has not been announced, but it is probable that the percentage of the whites and negroes will not vary greatly from those of the census of 1900 (55 per cent. whites and 45 per cent. negroes). It will probably show a slight increase in the percentage of the white population. Of the 355 convicts sentenced for homicide, 110 were sentenced for murder in the first degree (or for life), 146 were sentenced to the penitentiary for murder in the second degree, the length of their sentences ranging from ten to fifty years, 99 were sentenced for manslaughter in the first degree, their terms ranging from one year and a day to ten years. During the period covered by this report, 37 persons were sentenced to hard labor for the county for manslaughter in the two degrees.

The number of cases of homicide disposed of during the two years ending September 30, 1910, is 27 less than the number disposed of during the preceding two years. Thus it will be seen that the statistics in this report show a decrease in the number of homicides for this period as compared with the two previous biennial periods, 1904-06 and 1906-08.

Death sentences for the period return to the increase column—the death penalties pronounced by juries for the two years being 27, an increase of 13 over the number recorded in my first biennial report for 1906-1908.

Of this number (27), 25 were inflicted for murder, 1 for robbery, and 1 for carnal knowledge of a girl under 10 years of age.

No deduction of special value can be derived from the comparison of the statistics for the period covered herein and the next preceding period. The total of all character of cases remains about the same—a difference of 606. The total convictions in all cases for 1906-08 were 11,933; for 1908-10, they were 9,493—a decrease of 2,440 in this period. The total homicides for 1906-08 were 657; for 1908-10, they were 630—a decrease of 27 for this period. Yet with 534 convictions in homicide cases during the 1906-08 period, there were only 14 death penalties, while during this period, with 392 convictions—a decrease of 142 convictions—in homicide cases, there were 27 death penalties—an increase of 13.

THE NUMBER OF CASES OF HOMICIDE DIS-
POSED OF DURING THE 18 YEARS FROM
OCTOBER 1, 1892 TO OCTOBER 1, 1910.

For 2 years ending Sept. 30, 1894	306
For 2 years ending Sept. 30, 1896	377
For 2 years ending Sept. 30, 1898	402
For 2 years ending Sept. 30, 1900	394
For 2 years ending Sept. 30, 1902	491
For 2 years ending Sept. 30, 1904	338
For 2 years ending Sept. 30, 1906	669
For 2 years ending Sept. 30, 1908	657
<i>For 2 years ending Sept. 30, 1910</i>	<i>630</i>

During the two years included in this report the violation of the prohibition laws of the State has been

predominant. There have been 3,005 cases of this character disposed of as shown by this report. [For the period, 1906-08, abusive language was the predominant crime; for 1904-06, assault and battery with weapon; and for 1902-04, carrying concealed weapons.] Of the 3,005 prohibition cases, 1,018 were convicted; 418 were acquitted and 1,569 cases were never tried, having been dismissed or abated. The next approach to this number, for the period, was in the offense of assault and battery, with 1,664 cases and 806 convictions.

During the past two years there have been 1226 cases of concealed weapons disposed of, with 593 convictions, 169 acquittals; 464 abated and withdrawn. This shows a material decrease in this offense compared with the period ending October 1st, 1908, when there were recorded 1762 cases of concealed weapons disposed of, with 1184 convictions. During the present period there were 903 cases of assault and battery with a weapon, with 647 convictions as compared with 1294 cases of this offense with 860 convictions for the previous two years, showing for the present period a material decrease in this offense.

It also appears that the number of cases of burglary, in its different forms, for the present period is 725 and the number of cases of like character during the previous period was 579; an increase in this offense for the present period of 146 cases. The increase in the commission of this offense serves to emphasize my recommendation on this subject in my last report, that burglary in aggravated cases, such as burglary in a dwelling house in the night time, should be made a capital felony.

The crimes of burglary, robbery and larceny, in both degrees, aggregate 2,529 cases, with 1,587 convictions;

599 sentences being to the penitentiary; 655 to hard labor and 404 to jail or by fine imposed, it appearing that in 71 cases two forms of punishment were imposed. It will be observed by comparison that there was an increase of only 38 cases over the preceding two years, but a decrease of 73 convictions.

From an analysis of the figures shown in the general statement, it appears that the principal *increase* was in the offenses of violation of *prohibition laws, burglary and gaming*; a material *decrease* being shown in the offenses of *concealed weapons, abusive language, the different forms of assault and public drunkenness*.

The largest decrease is shown under the crime of public drunkenness. This should be a matter of congratulation to the people of Alabama. The total number of cases reported dropped from 968 for 1906-08 period to 635 cases for the present period—a decrease of 34½ per cent.

The general percentage of convictions in the cases disposed of for the past two years throughout the State is 48, a decrease of 10 per cent from the previous period, 1906-08.

The percentage of convictions in the several circuit and criminal courts in the State ranges from 27 to 80, as will appear from the several tabulated statements, showing the records of the Solicitors separately.

Of the total number of 20,066 cases reported, 7,682 were not tried, being either dismissed, abated or withdrawn. Adding to this number the 2,891 acquittals, it will be noted that 10,573 prosecutions were instituted and for some reason, except in a few cases abated by death, the testimony was not sufficient to convict. It is manifest from the astonishing number of cases which did not come to trial during this period, representing 38 per cent. of the total number of reported cases, that the

practice of instituting frivolous prosecutions in misdemeanor cases, is a growing evil. When the people of Alabama realize that in the administration of the State's criminal laws, during a period of two years, 4 cases out of every 10 are dismissed without trial, all intelligent and thoughtful citizens should unite in a combined effort to find some remedy to correct this condition.

RELATION OF INTOXICATING LIQUORS TO HOMICIDE.

In the last report of the Attorney General, there appears a discussion on this subject. For the reasons assigned therein, I am including a statement here showing, for the present period, the number of homicide cases disposed of in a number of the counties and the number of cases in which the evidence showed that the defendant or deceased had been drunk or drinking at the time of the killing. This statement deals with about 40 per cent of the total homicides reported for the period and with about 25 counties of the State.

For the purpose of making this report, I addressed letters to all solicitors of the State during the past few months, requesting this information. Most of the solicitors of the City and County Courts and several of the Circuit Solicitors furnished the data.

This statement shows 236 homicide cases, of which 142 of the defendants were negroes and 94 were whites. In 97 of the cases the defendant or the deceased was drunk or drinking at the time of the homicide. The percentage of liquor homicides in the several counties included in the statement ranges from 20 per cent to 83 per cent. It also shows that 60 per cent of the defendants were negroes and 40 per cent were whites; that the general percentage of liquor homicides was 41 and non-liquor homicides 59.

In my previous report, 1906-08, on this subject, which included reports from 45 counties and embraced only nine months of the 24 months, during which the general prohibition laws were in effect, 368 homicide cases were recorded, showing negro percentage 67.8 and liquor homicide percentage 53; non-liquor homicide percentage 47.

	No		Per Cent	
	White		of	
	White	Negro	Liq'r	Liquor
4th Circuit, partial report				
for Dallas County ----	2	12	11	3 21
5th Circuit, reported ----	15	16	16	15 48 1/2
7th Circuit, reported ----	7	2	2	7 77
11th Circuit, reported ---	7	12	7	12 63
16th Circuit, reported ---	4	--	4	-- --
City Court of Montgom'y	3	29	27	5 15 2/3
Walker Law & E. Court--	10	6	10	6 37 1/2
Tuscaloosa L. & E. Court	4	10	7	6 42 1/2
City Court of Selma ----	2	12	11	3 21
City Court of Anniston --	6	7	10	3 23
City Court of Mobile ----	9	17	16	10 38 1/2
City Court of Talladega--	3	11	7	7 50
City Court of Gadsden --	23	7	5	25 83 1/3
Madison Law & E. Court--	6	4	8	2 20
	94	142	139	97 41 p.c.

Note: • One Solicitor in reporting statistics on this subject, says: "You will observe there has been nothing like as many homicides in this county since prohibition. We have far too many now, but conditions have been greatly improved within the last year or two. There had been no homicide in this county up to the 1st of October of this year, hence the grand jury which convened 19th Sept., was able to report there was no homicide for their investigation committed in our county during this year. The grand jury for the Spring term was able to make similar report. However, the grand jury in order to influence enforcement of the prohibition law took a recess after three weeks work and adjourned to reconvene or return to work November 21st, instant.

Most homicides I have ever tried, and same may be said of assaults with intent to murder, have been influenced by liquor."

The experience of several other prosecuting officers of the State is given to the same effect.

Applying the liquor percentage, thus obtained, to the total homicides for the period, it appears that intoxicating liquor caused, or contributed to, the killing of 258 men in Alabama for the two years ending September 30, 1910, and in 372 homicide cases during the same period, there was no evidence of any intoxicating drink. That is, according to these statistics for the two years, 129 men were killed annually as the result of liquor, and 186 were killed annually without such influence.

For the previous period, 1906-08, when the liquor percentage was 53, the annual liquor homicides were 174 and the annual non-liquor homicides were 154.

In addition to the increase in the number of homicides due to the use of intoxicating liquors by a population almost equally divided between whites and negroes, in a climate which aggravates the effect of such use, I would say that there may be assigned as further reasons contributing to the unfortunate and deplorable homicide record of Alabama, first, a general prolific source of crime among the negro population; second, the natural conflict or friction growing out of business and other necessary relations between two races essentially dissimilar in characteristics and widely separated in social life; and, third, the racial characteristic of the Southern man to resent quickly an insult and to act upon slight provocation, especially in matters involving personal honor.

In several of the large cities of the State, the violations of the prohibition laws and the many unlawful conditions under which intoxicating liquors are sold, has become intolerable. Whether this condition is due to a stolid and indifferent public sentiment, to the inactivity of public officials or to other reasons, as a sequence, the spirit of law enforcement has suffered and the spirit of law defiance has grown. It would appear,

at least, that in such localities, the effect of an acquiescence and permissiveness of a very large majority of law-abiding citizens has been, to give to a small minority of law-breakers almost unbridled license.

With no effort to solve the problem here, I may, nevertheless, truly assert that so long as the forces of education and enlightenment continue to fight illiteracy, the forces of prohibition and temperance will wage war upon the admitted evil of the liquor traffic. If it be true, as has been stated in the public prints, that prohibition is a failure in this State, or in any part of it, it is due, in my judgment, not so much to a depreciated or limited conception of civic obligations on the part of our people as to the existence of great differences of opinion on the subject of prohibition among many of our best citizens, and to some extent to political influences.

CRIMINAL APPEALS TO THE SUPREME COURT DURING PAST TWO YEARS.

Two hundred and eighty-six cases of a criminal and quasi criminal nature were brought to the Supreme Court for review, during the two years ending September 30, 1910. (Nov. Terms 1908-9 and 1909-10.)

Of this number, 162 were affirmed or dismissed and 124 were reversed and remanded, or reversed and rendered.

The following comparative statement is submitted for the purpose of showing the volume, during recent years, of this character of business in the Supreme Court:

In 1885-86, 148 appeals, 90 affirmed or dismissed, 58 reversed. Percentage of reversals, 39.

In 1887-88, 117 appeals, 72 affirmed or dismissed, 45 reversed. Percentage of reversals, 38.

In 1889-90, 189 appeals, 110 affirmed or dismissed, 79 reversed. Percentage of reversals, 42.

In 1891-92, 185 appeals, 112 affirmed or dismissed, 73 reversed. Percentage of reversals, 39.

In 1893-94, 230 appeals, 124 affirmed or dismissed, 106 reversed. Percentage of reversals, 46.

In 1895-96, 263 appeals, 158 affirmed or dismissed, 105 reversed. Percentage of reversals, 40.

In 1897-98, 231 appeals, 150 affirmed or dismissed, 81 reversed. Percentage of reversals, 35.

In 1899-1900, 189 appeals, 134 affirmed or dismissed, 54 reversed. Percentage of reversals, 28.

In 1901-02, 225 appeals, 163 affirmed or dismissed, 62 reversed. Percentage of reversals, 28.

In 1903-04, 253 appeals, 164 affirmed or dismissed, 89 reversed. Percentage of reversals, 35.

In 1905-06, 292 appeals, 184 affirmed or dismissed, 108 reversed. Percentage of reversals, 36.

In 1907-08, 314 appeals, 209 affirmed or dismissed, 105 reversed. Percentage of reversals, 33.

In 1909-10, 286 appeals, 162 affirmed or dismissed, 124 reversed. Percentage of reversals, 43.

REVERSALS IN CRIMINAL CASES.

In all the reports of the Attorney General in recent years there has been a paragraph devoted to this subject, most of them containing a recommendation that reversals should not be granted on purely technical points.

Since 1894 the doctrine of error without injury has been somewhat relaxed by our court under the influence

of section 4333 of the Code of 1896—now section 6264 of the Code of 1907—but the statute is yet so strictly construed by the court that it does not meet the purpose for which it was designed. The last clause of this section of the Code, (6264) should be amended so as to read, (new matter in italics): “The judgment of conviction must not be reversed because of error in the record *unless* the court is satisfied that injury resulted therefrom to the defendant.” This change would require the court to say *affirmatively* that injury resulted to the defendant, whereas, under the present statute the court must be satisfied that “no injury resulted therefrom to the defendant,”—a conclusion difficult to reach.

I call attention again to the practice of giving special charges to the jury at the instance of the defendant. Where the proposition embodied in the special charge is covered by the general charge, the former, if correct, must also be given under the present practice, otherwise the case will be reversed. In the average criminal case such charges have but little influence with the jury, and I am convinced that this practice as to special charges should be abolished entirely, or at least modified to this extent:

The judgment should not be reversed for the refusal of a special charge requested by appellant if the proposition embodied in such charge is substantially covered by the oral charge of the court, and that no case be reversed unless it affirmatively appears from the record that the trial court failed or refused to charge the jury upon the proposition embodied in the refused charge.

CRIMINAL CASES IN THE SUPREME COURT OF THE UNITED STATES.

Since the last report of the Attorney General, October 1st, 1908, there have been three criminal cases appealed to the Supreme Court of the United States in which the Attorney General has represented the State of Alabama. A synopsis of these three cases is given below.

Alonzo Bailey v. State of Alabama.

Bailey was arrested on April the 18th, 1908, on an affidavit charging him with obtaining money under a written contract to perform labor or services with intent to defraud. He applied for discharge on habeas corpus and the lower court refused to discharge him, from which he appealed to the Supreme Court of Alabama, where the judgment of the lower court was affirmed (158 Ala. 18). From this judgment, Bailey sued out a writ of error from the Supreme Court of the United States, and that court affirmed the judgment of the Supreme Court of Alabama (211 U. S. 453), declining to determine the merits of the case in advance of an indictment and conviction of the charge.

Bailey was then indicted and convicted, from which judgment of conviction he appealed to the Supreme Court of Alabama and the judgment was affirmed (161 Ala. 79). Bailey then sued out a writ of error from the Supreme Court of the United States, and the case has been submitted to that court, but as yet no decision has been handed down.

The validity of the labor contract statute of Alabama is attacked on the grounds that it is violative of the 13th

and 14th amendments to the Constitution of the United States and of the Acts of Congress against peonage.

J. D. Compton v. State of Alabama.

Compton was arrested in 1908 on an extradition process charging him with violation of certain laws of Georgia. He appealed for his discharge on habeas corpus. The lower court refused the writ and this judgment was affirmed on appeal (152 Ala. 68). Compton then sued out a writ of error from the Court of the United States, and in that court the judgment of the Supreme Court of Alabama was affirmed. (214 U. S. 1.)

Alfred Dozier v. State of Alabama.

Dozier was arrested in 1908 on an affidavit charging him with carrying on a business of soliciting orders for the enlargement of photographs or disposing of picture frames without a license, contrary to the provisions of section 17 of the act of the Legislature approved March the 7th, 1907 (Gen. Acts 1907, page 469). He was convicted in the lower court and this judgment of conviction was affirmed (154 Ala. 83). Dozier then sued out a writ of error from the Supreme Court of the United States where the judgment of the Supreme Court of Alabama was reversed and remanded. The Supreme Court of the United States held that the business transacted by Dozier was protected from state taxation by the interstate commerce clause of the Federal Constitution (218 U. S. 124).

OFFICIAL OPINIONS.

The preparation of opinions at the request of those officers who are entitled to the official advice of the Attorney General under section 635 of the Code, has consumed a considerable portion of the time of the Attorney General during this period. A number of important questions have been presented for investigation and decision.

In another part of this report will be found 110 opinions wherein the most important points upon which the Attorney General has been called upon to rule, have been considered. They represent only a part of the total number of opinions rendered during the period.

The Attorney General continues to be embarrassed in his official work by numerous requests for unofficial advice. It is impossible to respond to all of these unofficial inquiries, but it has been the policy of this Department, during my administration, to respond courteously to these requests, and in important cases of general public interest, to render unofficial advice or to recommend some course whereby the information sought could be obtained.

RECOMMENDATIONS.

In addition to the suggestions heretofore made in this report, I beg to submit the following recommendations:

1. Section 6855 of the Code should be repealed. This section was enacted in 1867 and has been carried forward in every Code since that date. It attempts to punish an immigrant for leaving the services of an employer without repaying passage money and other advances.

Fraud is not made an element of the offense and the statute is clearly unconstitutional and an attempt to imprison for debt, as well as being violative of the present Federal Immigration Acts, and the 13th Amendment to the Constitution of the United States. The reports made to this office do not show that any prosecution has ever been instituted for a violation of this statute; but the fact of its presence in the Code, has subjected the State to the severest criticism, and may have, and probably has already had, a serious effect in preventing immigrants from coming to Alabama; whereas, it is now, and has been for many years the policy of the State to invite immigration from other States as well as from foreign countries.

2. A statute should be passed providing that where a defendant, indicted for murder in the first degree, has been convicted of a lower degree of homicide, and the judgment of conviction reversed by the Supreme Court, he shall be placed upon trial as in the first instance, for the highest degree of murder charged in the indictment. The purpose of this suggestion is, to abolish that rule of decision, that a conviction of a lower degree of homicide than that charged in the indictment is an acquittal of the higher degrees. A law of this character in Missouri was held constitutional by the Supreme Court of the United States in *Kring v. Mo.*, 107 U. S. 221.

3. For a number of years the Attorney General's report has contained the recommendation that burglary in the night-time be made a capital felony. I also submit this recommendation in the hope that the Legislature will take some action thereon, and at least provide for a higher punishment for this offense.

4. Subdivision 5 of section 635 of the Code should be amended so as to require the Attorney General to make his report to the Governor in the month of De-

ember of each even numbered year, thereby giving him the opportunity to report at the close of his term of office.

5. The Act of February 23, 1907, (Gen. Acts 1907, p. 135) creating the Railroad Commission, provided by section 36 et seq. for an appeal from *all orders* of the Commission. The Act of November 23, 1907, (Special Acts 1907, p. 57) repealed the sections of the Act of February 23, 1907, providing for such appeals, and by the Act of November 23, 1907 (Spec. Acts 1907, p. 49) substituted a system of appeals only from orders of the Commission affecting rates. This last Act was amended by the Act of August 19, 1909 (Spec. Acts 1909, p. 96); but in both of the acts last referred to, no provision was made for appeals *from orders of the Commission other than orders affecting rates*. The statute should be amended by providing for an appeal from all orders of the Commission whether they affect rates or otherwise. In suits now pending involving orders of the Commission providing for the building of depots, the question has been raised by the railroad companies that such orders are void because the law affords the railroad company no opportunity to appeal directly to the courts from such orders; and while I am inclined to think that the point is not well taken, yet the question may easily be removed by extending the present statutes to meet all cases.

6. Under the statute, the State officials are protected when following the opinion of the Attorney General. Those opinions cover a period of many years, and embrace a great variety of questions, many of which are constantly recurring. Many points decided have never been presented to the Supreme Court for adjudication. At present these opinions are of little practical value as precedents for the guidance of heads of State Depart-

ments, as most of the reports of the Attorney General in which they are printed have not been preserved. It is difficult at present to obtain a complete set of these reports. I recommend the publication of all official opinions of former Attorneys General, under the supervision of the Attorney General, in a volume of the size and style of the Alabama Reports and in such number as may be deemed advisable.

7. This is the era in criminology "when justice has come to be seasoned with mercy and humanity," and I am in accord with the high-minded effort to keep pace with an advanced civilization, which has resulted in our present procedure for trial of the alleged *criminal insane*. Yet, I am one of those who hold the opinion that the present practice of submitting the special plea of not guilty by reason of insanity, along with the general issue of not guilty, and trying both at the same time, has been a failure oftener than a success in accomplishing the humane purposes of the framers of this system. It is now perverted frequently from its true use into an instrument of defense in a class of homicides never contemplated. Technically, evidence on the issue of insanity should not be considered by the jury in passing on the issue of guilt *vel non*. As a rule, the special plea is supported by a great mass of evidence which has no field of operation or relevancy under the general issue, and only serves to confuse the minds of the jury in reaching a verdict under this latter plea. It is absolutely impossible to expect a jury, as a human agency in the administration of the criminal law, to separate the facts adduced under each separate plea, yet the law requires this impossibility at the hands of the jury. Thus, the special plea of insanity often becomes a shield for the murderer and results in a shocking miscarriage of justice. The present system, as provided by sections 7176 and 7177 of the Code, should be changed so that the two

issues may be tried separately, and if the jury should find in favor of the defendant's sanity, he may be then tried for the crime, and in this manner eliminate in the latter trial all evidence on the question of sanity.

8. There is no adequate anti-trust statute in this State. Sections 7579 to 7582, inclusive, of the Code contain the only law on this subject, and so far as I can learn has never been invoked, if, indeed, they could be effectively made to meet any practical case. Almost every state has an adequate statute to meet and cope with modern conditions with respect to trusts and unlawful combinations in restraint of trade. I recommend the adoption of a law on the general line of the Federal Anti-trust Statutes.

9. The State Tax Commission, composed of three members informed and trained by experience in tax matters, has been clothed with extensive powers and jurisdiction in the assessment of the different subjects of State taxation. I recommend that sections 2133 et seq. relating to the duties of the State Board of Assessment, be either amended or repealed, and that the duties imposed therein upon the State Board of Assessment, be placed upon the State Tax Commission.

10. A study of the legislative events during my incumbency in office has convinced me that the public interest will be conserved by a return to biennial sessions of the Legislature.

11. A careful study of our school laws disclose in many respects a general lack of harmony and uniformity. This condition is due, first, to the numerous amendments to general laws affecting education and, second, to various local laws which have been enacted during the past 25 of 30 years. The last Code Commissioner called special attention to the difficulty which he experienced in an effort to harmonize these laws. In view of the conditions named, and based upon my knowledge

of this subject, obtained by careful investigation, in an effort, through official opinions, to construe and interpret the several laws so as to evolve a complete and consistent system, I recommend the appointment, by the next Legislature, of a Commission composed of members of the Legislature, the State Superintendent of Education, and one or more educators, to review, during the recess of the Legislature, all laws pertaining to public education and report to the Legislature a bill which shall embody an harmonious Code of School Laws. A number of the States of the Union have found it necessary, for the purpose of providing a proper and uniform system of school laws, to adopt the courses here suggested.

12. I recommend that the salary of the Attorney General should be fixed at \$4,500. I also recommend that the salary of the Assistant Attorney General should be increased. It should be adequate for the employment of a capable lawyer, all of whose time should be devoted to the service of the State. As stated heretofore in this report and for the reasons there set forth, I think the volume of the work in this Department justifies an additional assistant to the Attorney General.

CONCLUSION.

I am pleased, in closing this general review of my work, to express my gratification upon the uniform cordiality and co-operation, which has characterized my official and personal relations with your Excellency and all other State officials. I also desire to attest my appreciation of the capable and sympathetic co-operation of the members of my office force in the discharge of the many duties devolving upon this Department.

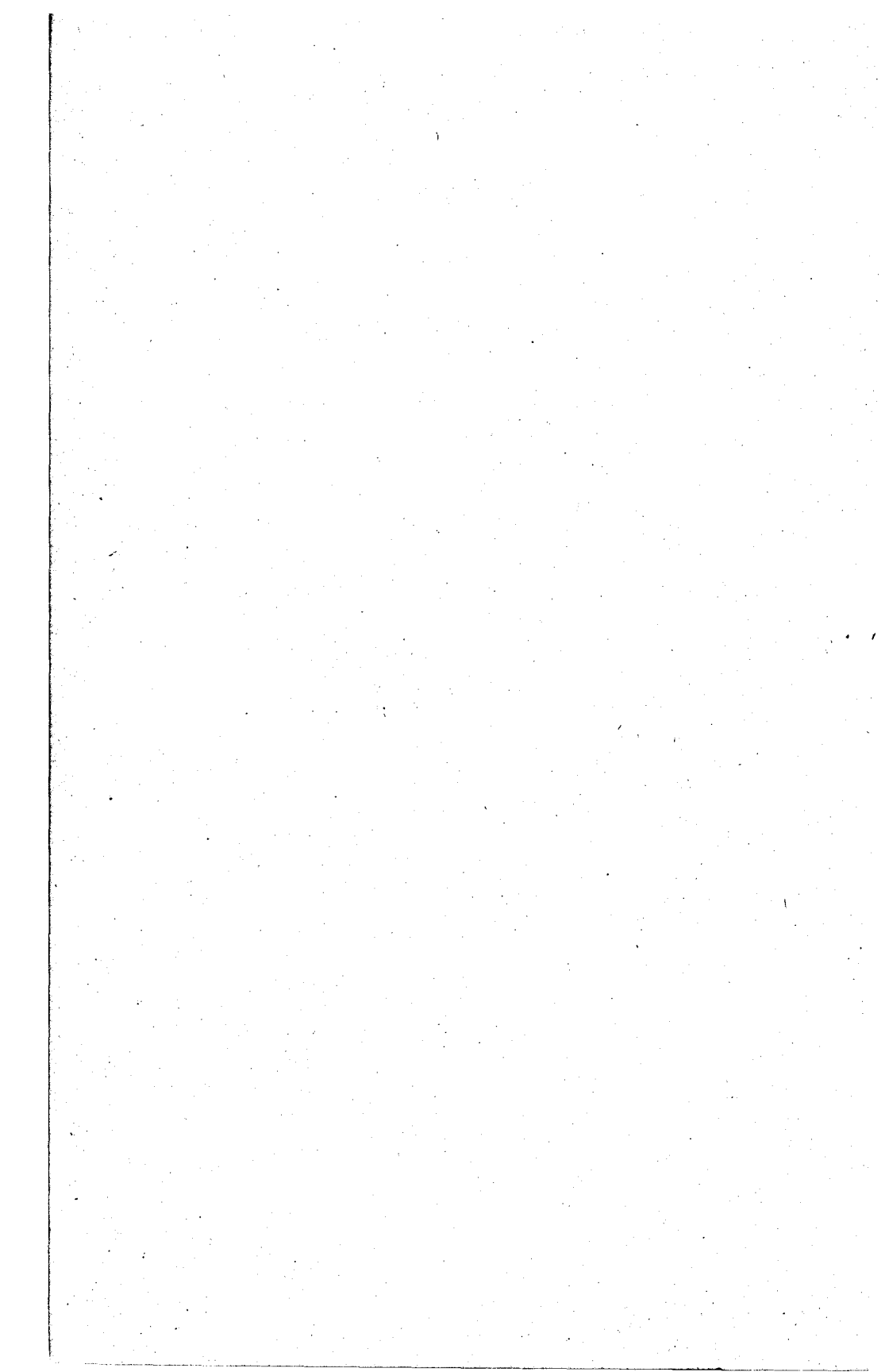
Respectfully submitted,

ALEXANDER M. GARBER,
Attorney General.

II-A

CIVIL CASES
PENDING AND DISPOSED OF
— FROM —

OCTOBER 1, 1908 TO OCTOBER 1, 1910



II-A.

CIVIL CASES.

Pending and Disposed of From October 1, 1908, to
October 1, 1910.

Louisville & Nashville R. R. Co. v. Railroad Commission
of Alabama.

In the Circuit Court of the United States, for the
Middle District of Alabama.

This proceeding grows out of the local act of Feb. 5, 1903, p. 771, requiring the railroad companies entering Mobile to provide for the construction of a union passenger depot in that city. The railroad companies having failed to provide for the construction of the depot, the Railroad Commission made an order to that end, and the depot was thereafter erected by the Gulf Terminal Company, a subsidiary corporation of the Mobile & Ohio Railroad Company. Upon its completion, the Railroad Commission directed the railroads entering that city to use the union depot. The Louisville & Nashville Railroad Company refused to do so, and filed its bill in the United States Court on the 20th day of July, 1908, to enjoin the enforcement of this order. This suit is still pending, demurrers having been filed by respondents to the original bill of complaint.

FOREIGN CORPORATION FRANCHISE TAX CASES.

The act of March 7, 1907 (Gen. Acts 1907, p. 418) required foreign corporations authorized to do business in this State to pay an annual franchise tax. The validity of this statute was tested by the Southern Railway Co., Central of Georgia Ry. Co., the Seaboard Air Line, through Warfield, et al., receivers, the Louisville & Nashville R. R. Co., Atlantic Coast Line R. R. Co., and the Nashville, Chattanooga & St. Louis Ry. The companies named paid taxes under protest and sued to recover the same. The validity of the statute was sustained by the lower courts and by the Supreme Court of Alabama. *Southern Ry. Co. v. Greene*, 49 So. 404.

The appellant railroad companies prosecuted error to the United States Supreme Court. This court held the act of March 7, 1907, unconstitutional and void as applicable to these foreign corporations, in that it denied to them the equal protection of the laws under the 14th Amendment to the Constitution of the United States.—*Southern Ry. Co. v. Greene*, 216 U. S. 400 and companion cases reported in same volume.

For further information concerning this litigation and the effect of the decision of the Supreme Court of the United States, see opinion delivered to the State Auditor on the subject on page 156 of this report.

RAILROAD RATE CASES.**RAILROAD SUITS PENDING IN THE UNITED STATES CIRCUIT
COURT AT MONTGOMERY, ALABAMA, AGAINST THE
RAILROAD COMMISSION OF ALABAMA AND
THE ATTORNEY GENERAL.**

Suits were instituted in the United States Circuit Court for the Northern Division of the Middle District of Alabama, by the following railroad companies on March 25, 1907: Louisville & Nashville R. R. Co., South & North R. R. Co., Western Ry. of Alabama, Atlantic Coast Line R. R. Co., Central of Georgia Ry. Co., Nashville, Chattanooga & St. Louis Ry. Co., Alabama Great Southern R. R. Co., Southern Ry., Mobile & Ohio R. R. Co., Atlanta, Birmingham & Atlantic R. R. Co., Seaboard Air Line R. R. Co., and the Kansas City, Memphis & Birmingham R. R. Co. The purpose of these suits was to prevent the enforcement of the various rate statutes and certain other acts regulating railroads, enacted by the Legislature of Alabama in 1907. After the institution of these suits a compromise and adjustment was made between the State and the Southern Ry. Co., the Mobile & Ohio R. R. Co., the Alabama Great Southern R. R. Co., the Atlantic Coast Line R. R. Co., the Atlanta, Birmingham & Atlantic R. R. Co., the Seaboard Air Line Railroad Company and the Kansas City, Memphis & Birmingham R. R. Co., by the terms of which, the companies agreed to put into effect the statutory rates of Alabama and to dismiss the bills filed by them, and this agreement was carried out. The other original complainants, L. & N. R. R. Co., S. & N. Ala. R. R. Co.,

Central of Ga. Ry. Co., Western of Ala., and the N. C. & St. L. Ry., declined to make any adjustment of the matter and those suits are still pending. In addition, the Central Trust Company of New York afterwards filed a bill against the Central of Georgia Railway Company in which the Railroad Commission of Alabama, the sheriffs, solicitors and clerks were made parties defendant. Supplemental bills were also filed by the original complainant companies, making the sheriffs, solicitors and clerks defendants to their several bills. Various hearings have been had and decrees made in the causes which it is impossible in a brief synopsis to set forth. The court decided the preliminary questions in the cases on March 21, 1908 (161 Fed. 925). The principal questions involved were decided, against the defendants, and injunctions *pendente lite* were granted as prayed by complainants. Appeals were taken to the Circuit Court of Appeals of the Fifth Circuit, by defendants (the State), where on April 5th, 1909, the injunctions were dissolved in all the cases.—170 Fed. 225.

The contesting railroads endeavored to have the Supreme Court of the United States review the decision of the Circuit Court of Appeals on writ of certiorari. Upon the refusal of the Supreme Court, in May, 1910, to grant the writ, the statutory rates, both freight and passenger, were put into effect on June 1, 1910 (and have now been effective about 18 months), pending the adduction of testimony before Hon. W. A. Gunter and Hon. Wm. S. Thorington, the Special Masters appointed by the court. The cases of the Louisville & Nashville R. R. Co., the South & North Alabama R. R. Co., and the Nashville, Chattanooga & St. Louis Ry. Co., were assigned, under the order of reference, to Special Master Gunter, and the cases of the Central of Ga. Ry. Co., and the Western Ry. of Alabama were referred to Special Master Thorington.

At this date practically all of the testimony in these cases has been taken, except in the case of the Western Ry. of Alabama. Further progress in this litigation will soon result in the submission of the cases on briefs to the Special Master for findings and reports to the court under orders of reference, which require the ascertainment of certain facts, covering the important and material matters of controversy. The next step will be the confirmation vel non by the court of the reports by the Special Masters, followed by final decrees in the several cases.

The State of Alabama v. Carroll P. Haughton.

The State of Alabama selected the S. E. quarter of the S. E. quarter of sec. 17, T. 18, S. Range 5 W. in Jefferson county, Alabama, under the grant for the Girls' Industrial School by the Act of Congress, Feb. 18, 1899, and the Register of the land office at Montgomery rejected the State's application for patent for said land because of a prior homestead entry of Carroll P. Haughton, and the State appealed from this action to the Commissioner of the General Land Office; the objections to said order of the Register of the said Land Office and the notice of and for the appeal having been filed with said Register on May 13, 1908. The appeal is still pending.

The F. W. Cook Brewing Co. v. A. M. Garber, Attorney General, et al.

In the Circuit Court of the United States for the Middle District of Alabama.

This was a bill in equity filed on the 2nd day of January, 1908, to enjoin the defendants from enforcing the provisions of the prohibition law in Alabama on the theory that this law was unconstitutional. The defendants demurred to the bill; the court sustained the demurrer and dismissed the bill.

Railroad Commission of Alabama v. L. & N. Railroad Co., et al.

Before the Interstate Commerce Commission.

This proceeding was instituted in 1908 to prevent the various railroad companies operating in the State and South and East of Ohio and Mississippi rivers from putting into effect an increase in the interstate rates on packing house and grain products. On October 15th, 1910, the Interstate Commerce Commission ordered the complaint dismissed, holding that the rates were not shown to be unreasonable or excessive.

Price Williams, Jr., Judge of Probate, of Mobile County v. W. W. Brandon, State Auditor.

In the City Court of Montgomery.

This was a mandamus proceeding instituted on August 2, 1907, to require the Auditor to pay over to the petitioner the sum of \$3,343.74, alleged to be due the tax officers of Mobile county on account of certain sales of tax lands in that county. The lower court directed the Auditor to pay over to the petitioner \$2,500.00. From this judgment the State appealed to the Supreme Court and the judgment of the lower court was reversed and

the petition dismissed.—46 So. 199. A second suit was then instituted on the same cause of action and was decided in favor of the plaintiff by the City Court of Montgomery, from which judgment the State appealed to the Supreme Court. This court in 51 So. 873, affirmed the decision of the lower court.

The Guarantee Life Ins. Co. v. Frank N. Julian, Insurance Commissioner.

In the City Court of Montgomery, in Equity.

The original bill in this cause was filed in August, 1908, to enjoin the respondent from cancelling license of the Complainant to engage in the business of insurance in Alabama. The lower court sustained the equity of the bill and the decree was affirmed on appeal. (159 Ala. 533). A final decree was rendered in the cause on July 12, 1910, enjoining respondent as prayed in the bill.

The State of Alabama v. L. & N. R. R. Company.

In the City Court of Montgomery.

This suit was instituted by the State on the 11th day of Dec., 1908, to recover the statutory penalty for the failure of defendant to comply with the order of the Railroad Commission to erect a depot and establish a side track at Corduroy Crossing in Monroe county, Ala. The lower court sustained the demurrer of the defendant to the complaint and rendered judgment for the defendant in November, 1910. From this judgment, the State prosecutes an appeal to the Supreme Court.

Railroad Commission of Alabama v. Central of Georgia
Railroad Company.

Before the Interstate Commerce Commission.

This proceeding was instituted by the Railroad Commission of Alabama on December 4th, 1908, to require the defendants to establish a rate on uncompressed cotton, and is still pending before the Interstate Commerce Commission. Hon. Chas. D. Drayton, of Washington, D. C., has been associated with the State as counsel for the Railroad Commission.

Capital Brewing & Ice Co. v. L. & N. R. R. Co.

In the City Court of Montgomery.

This was a mandamus proceeding instituted to require the defendant to transport certain beverages mentioned by the petitioner, on the theory that the Act of the Legislature prohibiting such transportation, approved on the ___ day of _____, 1907, was void. By leave of the court and with the consent of the defendant the State of Alabama appeared by the Attorney General and Assistant Attorney General in support of the constitutionality of this Act. The lower court overruled the demurrer to the petition.

W. Young Johnson v. J. B. Gaston, Judge of Probate.

In the City Court of Montgomery.

This was a mandamus proceeding instituted on the 9th day of January, 1909, to compel the respondent to issue a license to petitioner to engage in the business of

retailing spirituous, vinous or malt liquors in the City of Montgomery, during the year 1909; the theory of petition being that the prohibition law then in force in the City of Montgomery was unconstitutional. The Attorney General appeared for the respondent and demurred to the petition, and the court sustained the demurrer.

Pac. Improvement Co. v. Chattanooga So. R. R. Co.

In the Circuit Court of the United States for the Eastern Division of the Northern District of Alabama, pending in Anniston, Ala.

The State of Alabama intervened in this cause by petition filed in April, 1909, praying for an order directing the receivers of respondent Railroad Company to pay delinquent ad valorem taxes to the State of Alabama and the counties of Etowah and Cherokee. After the filing of the petition agreements were reached between counsel of the respective parties which resulted in the ultimate payment of the taxes, amounting in all to \$8,434.19, not including interest.

The State of Alabama, ex rel. Attorney General v. F. F. Ballard, Doing Business in the Name of the Bank of Fruitdale.

In the Chancery Court of Washington County,
Alabama.

This was a bill in equity filed in July, 1909, under section 3560 of the Code pursuant to the direction of the Governor to liquidate the affairs of the Bank of

Fruitdale, and the cause proceeded regularly to final decree.

A. J. Weil v. The State of Alabama.

In the Circuit Court of the United States, for the Southern Division of the Northern District of Alabama.

This bill was filed on October 9th, 1909, making the State of Alabama a defendant in this case merely as the trustee and holder of the legal title to lands under mortgage to the State as security given by the Alabama & Chattanooga Railroad Company for a loan of the State's credit to expedite the construction of the road. The bondholders attempted to enforce their bonds against the lands mortgaged to the State. Demurrer to the bill was sustained and the bill dismissed. The case is reported in 175 Fed. -----.

Western Union Tel. Co. v. Frank N. Julian, Secretary of State, et al.

L. & N. R. R. Company v. Frank N. Julian, Secretary of State.

In the Circuit Court of the United States for the Southern Division of the Northern District of Alabama.

The bills in these cases were filed on October 18, 1909, to enjoin the defendants, Clerks of State Courts, from certifying the fact of the removal by the complainants of certain suits from the State Courts to the United States Court and to enjoin the defendant, Julian, from cancelling the permit of complainants to do business in Alabama under section 3654 of the Code. The respond-

ents demurred to the bill; the demurrer was overruled and final decree rendered for the complainants. The defendants were preparing to sue out an appeal to the Supreme Court of the United States, when the court announced the opinion in *Herndon v. C. R. I. & P. R. Co.*, 218 U. S. 135, holding a similar statute of the State of Missouri to be unconstitutional and the appeal was then abandoned.

Montgomery Light & Water Power Company v. Frank N. Julian, Secretary of State, et al.
In the United States Circuit Court for the Northern Division of the Middle District of Alabama.

This bill is similar to the bills in the cases last above discussed and were filed in July, 1909, to enjoin the enforcement of section 3654 of the Code. Defendants demurred to the bill; the court overruled the demurrer and a final decree was rendered for the complainant.

State of Alabama v. Enterprise Lumber Co.
In the Circuit Court of Montgomery County.

This suit was instituted on November 4th, 1909, under section 6564 of the Code, to recover six hundred dollars for the escape of three convicts who had been leased to the Enterprise Lumber Company. The case is still pending.

The State of Alabama v. Anniston City Land Co.
In the Supreme Court of Alabama, on Appeal.

This proceeding was originally filed in the Circuit Court of Calhoun County, for the collection of back taxes in certain land belonging to the Anniston City Land Co. The evidence showed that the land in question had been leased by the owners for school purposes. The owners contended that this land was exempt from taxation under section 91 of the Constitution of 1901. From the judgment subjecting the land to taxation the owners of the land appealed to the Supreme Court and the judgment was there reversed and remanded, the Court holding the exemption claim to be valid, and applying the criterion of the *exclusive* use of the property for school purposes as the constitutional test. (48 So. 659.)

State v. Bley.

In the Supreme Court of Alabama, on Appeal.

This was a proceeding of the State against Isadore Bley, for the taxation of bank stock. The proceeding was commenced before the County Court Commissioners, and appealed from their order to the Circuit Court of Marengo county, and from this Court the State appealed to the Supreme Court of Alabama.—50 So. 263. The Court upheld the State's contention that the act of September 30th, 1903, which provides that a tax commissioner may appeal from the order of the Court of County Commissioners at any time within ten days, is a valid enactment, the Circuit Court of Marengo County having held said act to be unconstitutional.

The State of Alabama v. Sloss-Sheffield Steel & Iron Company.

In the Supreme Court of Alabama, on Appeal.

This proceeding was appealed to the Supreme Court from the Circuit Court of Franklin County and was for a re-assessment of taxes against the defendant's property. This case was tried in the Circuit Court on an appeal from the Commissioner's Court. The Circuit Judge sustained the defendant's motion to quash the proceeding and the demurrer thereto for the reason that the property was assessed *in solido* and not separately, and that other property than that assessed by the owner was returned by him, upon which the increase of taxation was based. The Supreme Court held that this action of the Circuit Court was error, and that a Tax Commissioner was authorized to make additional assessment against any property when in his opinion the property has been under-valued, and return such re-assessment to the Commissioner's Court. (50 So. Rep. 367).

The State of Alabama v. Birmingham Ry., Light & Power Co.

In the City Court of Montgomery.

The State Tax Commission fixed the value of the franchise or intangible property and assets of the defendant for the assessment of taxes for the tax year of 1910, and the defendant not being satisfied with such valuation, appealed to the City Court of Montgomery on May 5, 1910. Subsequently an agreement was reached between the parties, by which the valuation of the

intangible property of defendant for 1910 was fixed at \$3,442,026.00, and judgment by agreement entered accordingly.

The State of Alabama v. W. S. Compton, et al.
In the Circuit Court of Montgomery County.
(Two Suits.)

These suits were instituted in May, 1910, against Compton, former County Superintendent of Education of Marengo county, and the sureties on his official bonds for certain alleged defalcations committed by him while in office. The cases were settled and dismissed on the payment by defendant into the State Treasury of the sum of \$1,344.13 in accordance with decree of the State Board of Compromise.

D. D. Askew, Solicitor, v. W. W. Brandon, Auditor.
In the Circuit Court of Montgomery County.

This was a mandamus proceeding instituted by the petitioner in May, 1910, to require the Auditor to draw his warrant in favor of petitioner at the rate of \$2,400.00 per year in payment of petitioner's salary as Solicitor, instead of at the rate of \$1,800.00 per year, on the theory that the provision of the Act creating the Fifteenth Judicial Circuit, fixing the salary of such solicitor, approved March 2, 1907, was unconstitutional, and, therefore, the petitioner should be paid the salary fixed for other Circuit Solicitors under section 7791 of the Code. The lower court granted the prayer of the petition and the respondent appealed to the Supreme Court, where the matter is now pending.

The State of Alabama ex rel. Attorney General, v. First State Bank.

In the Chancery Court of Jackson County.

This was a bill filed in May, 1910, under section 3560 of the Code pursuant to the direction of the Governor to liquidate the affairs of the First State Bank of Bridgeport. The cause is still pending.

Robert Beasley v. W. W. Brandon, Auditor.

In the Circuit Court of Montgomery County.

This was a mandamus proceeding instituted on the 24th day of May, 1910, to require the Auditor to draw his warrant in favor of petitioner, a Confederate pensioner, for an amount larger than that which the Auditor had theretofore been paying to the petitioner. The cause is still pending.

Northern Ala. Ry. Co. v. Ala. R. R. Commission.

In the City Court of Montgomery, in Equity.

The bill in this cause was filed May 26, 1910, to enjoin the enforcement of an order of the Railroad Commission to require the erection of a joint depot at Jasper, Ala., and the cause is still pending. Respondents' demurrer has been overruled and answer to bill has been filed.

B. A. Alford, et al. v. Union Bank & Trust Co.

In the Circuit Court of Jefferson County, in Equity.

B. H. Wilkerson, Superintendent of Education of Lamar county, deposited \$3,076.73 in the Union Bank & Trust Co., at Vernon, Ala. Before this deposit was withdrawn the bank ceased to do business and the affairs of the bank are now in process of liquidation in the above styled cause. In June, 1910, a proceeding was instituted in said cause in the name of the State of Alabama, to establish the right of the State to the payment of the entire indebtedness due by said Wilkerson prior to the payment of any claims of other creditors. This proceeding was instituted at the instance of the American Surety Co., surety on the bond of Superintendent Wilkerson. A similar proceeding was instituted in the same cause in July, 1910, by the probate judge of Clay county, and the sureties on his bond, and is still pending.

The Western Ry. of Alabama v. R. R. Commission of Alabama.

In the City Court of Montgomery, in Equity.

The bill was filed in this cause on August 18, 1910, to enjoin the enforcement of an order made by the Railroad Commission, requiring the complainant to establish a depot at Lanett, Ala. The cause was settled and dismissed, and complainant agreeing to comply with the order of the Commission.

Montgomery Abstract Co. v. W. W. Brandon, State Auditor.

Bigbee Fertilizer Co. v. W. W. Brandon, State Auditor.

In the Circuit Court of Montgomery Count.

Mandamus proceedings were instituted in September, 1910, by the respective petitioners to require respondent to draw his warrant for the amount of the corporation privilege tax for engaging in a particular business. The cases are still pending; demurrer of respondent in the case of the Montgomery Abstract Co. was sustained as this report goes to print.

Alex. M. Garber, Attorney General, v. The Guarantee Bank & Trust Co.

In the Chancery Court of Jefferson County.

This proceeding was a bill in equity filed on October 5th, 1910, against the respondent bank in the Chancery Court of Jefferson County, under section 3560 of the Code of Alabama, pursuant to the direction of the Governor, to liquidate its affairs on account of insolvency. The cause is still pending.

Alex. M. Garber, Attorney General, v. The Bank of Paint Rock, a Partnership.

In the Chancery Court of Jefferson County.

This proceeding was similar to the one just above discussed. The bill was filed in October, 1910, in the Chancery Court of Jackson County and a receiver appointed to take charge of the affairs of the bank. Later, however, upon a motion of the respondent and a showing to the effect that the individual partners, the owners of the bank, were solvent and able to pay off the liabilities of the bank, and the majority of the creditors

agreeing to this arrangement, the court discharged the receiver .

Chinabee Cotton Mills v. The State of Alabama.

In the Supreme Court of Alabama, on Appeal.

This proceeding was instituted by the State against the appellant in the City Court of Talladega on account of its failure to take out a license required of certain corporations by subdivision 26 of section 2361 of the Code. Judgment was rendered for the State by the lower court and defendants appealed. The Supreme Court reversed the cause and rendered judgment for the appellant, holding that a cotton mill company organized under the laws of Alabama and doing business therein was required to pay a license tax under subdivision 27b of section 2361, and, therefore, not required to pay a privilege tax under said subdivision 26 of section 2361. (52 So. Rep. 390).

State of Alabama v. Pell City Manufacturing Co.

In the Supreme Court of Alabama, on Appeal.

This proceeding was similar to the case of Chinabee Cotton Mills v. The State, and when that case was decided this appeal was dismissed on motion of appellant. 52 So. Rep. 1039.)

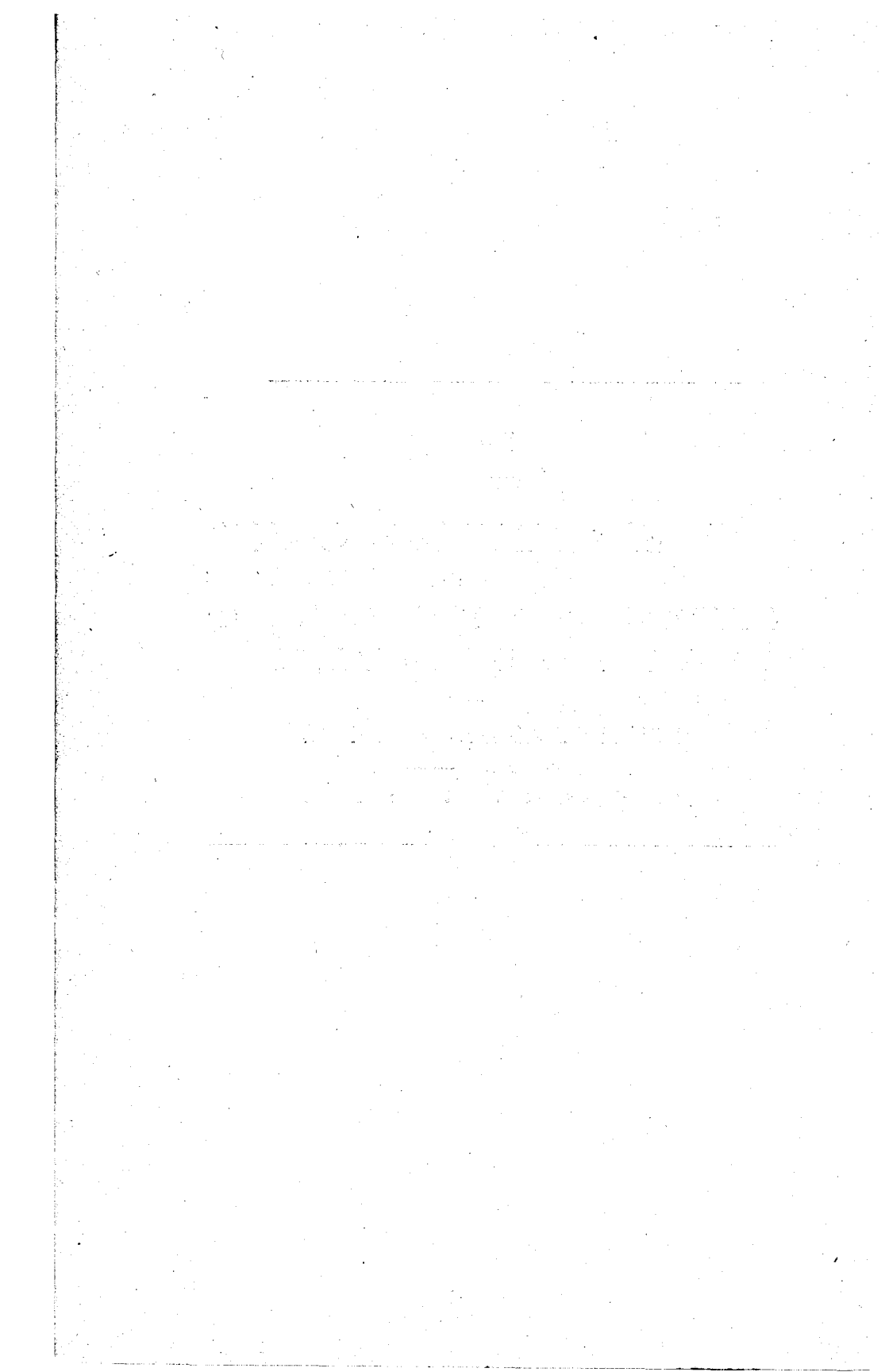
II-B

QUASI CRIMINAL CASES
AND
SEVERAL CRIMINAL CASES OF
GENERAL IMPORTANCE

PENDING AND DISPOSED OF

FROM

OCTOBER 1, 1908 TO OCTOBER 1, 1910.



IMPEACHMENT CASES.

State of Alabama, ex rel. Alex. M. Garber, Attorney
General, v. Frank Cazalas, Sr., Sheriff
In the Supreme Court of Alabama.

This was an impeachment proceeding instituted before the Supreme Court by the State on the relation of the Attorney General against Frank Cazalas, Sr., Sheriff of Mobile County. The proceedings were commenced at the direction of the Governor. The case was heard by the Court, sitting in banc.

The matter grew out of the alleged neglect of the Sheriff in allowing a body of masked men to take from the jail of Mobile County a prisoner confined therein, and, at a place not far from the jail, to put him to death.

The court in this case construed for the first time section 138 of the Constitution of 1901, which provides that when a prisoner is taken from the jail or from the custody of the Sheriff and put to death, owing to the neglect . . . or other grave fault of the Sheriff, such officer may be impeached. The whole case centered around the meaning of the word "neglect" as used in section 138 of the Constitution. The Supreme Court construed this section strictly in favor of the State, and held that the Sheriff was guilty of impeachable neglect under the facts of this case and entered an order removing said Cazalas from the office of Sheriff of Mobile County. The case is reported in 162 Ala. 210.

State of Alabama, ex rel. Alex. M. Garber, Attorney
General v. E. E. Latham, Sheriff.

In the Supreme Court of Alabama.

This was an impeachment proceeding before the Supreme Court against E. E. Latham, Sheriff of Tuscaloosa County, under the provisions of sections 173 and 174 of the Constitution of 1901. The proceeding was instituted by the Attorney General upon the report of the Grand Jury of Tuscaloosa County, charging the defendant with intemperance in the use of intoxicating liquors to such an "extent in view of the dignity of the office and the importance of its duties as unfits the officer for the discharge of such duties."

The Supreme Court, in construing that part of section 173 of the Constitution applicable to this case, held that it was not necessary to prove habitual drunkenness or drunkenness to any extent whatever, but that it would be sufficient to show that in view of the dignity of the office and the importance of its duties that the officer had been guilty of intemperance in the use of intoxicating liquors to an extent not in keeping with the dignity and importance of the office. However, in this particular case the court further held that the evidence offered by the state was insufficient to sustain the charges brought. The case has not yet been reported.

PROHIBITION CASES.

State ex rel Woodward, v. Skeggs, Probate Judge.

State ex rel Meyer, v. Greene, Probate Judge.

In the Supreme Court of Alabama, on Appeal.

These proceedings were the first cases appealed to the Supreme Court of Alabama involving the validity of the State wide prohibition law enacted by the Legislature at the Special Session of 1907. The appeals were presented from judgments denying writ of mandamus to compel the Judges of Probate of Morgan and Jefferson Counties to issue to the respective petitioners licenses to sell spirituous, vinous or malt liquors. The Supreme Court, in an elaborate opinion by Justice McClellan, 154 Ala. 249, held the law constitutionl and valid and not open to the variaus attacks made upon it by appellants. Affirmance of the judgment of the lower court followed in each case.

Elder v. The State.

In the Supreme Court of Alabama, on Appeal.

The defendant in this case was convicted in the City Court of Selma of violating the Act of Aug. 13th, 1907 (Gen. Acts 1907, p. 696) entitled an Act "to prohibit the sale of Hop Jack, Hop Tea, etc., or other beverages, the product of maltose or gencose." This case was appealed to the Supreme Court of Alabama, 162 Ala. 50, and there reversed and remanded. No point is affirmatively decided in this case, and a majority of the court did not concur in the reversal for the same reasons.

Eidge v. City of Bessemer.

In the Supreme Court of Alabama, on Appeal.

This defendant was convicted in the City Court of Bessemer for unlawfully keeping intoxicants on storage. He appealed to the Supreme Court of Alabama, 57 So. Rep. 246, and the court reversed and rendered the cause. It was held by a divided court, that an ordinance of the City of Bessemer, making it unlawful to store such intoxicants, was invalid and inconsistent with the prohibition laws of this State.

State ex rel Almon, Solicitor et al. vs. Burke, Judge.

In the Supreme Court of Alabama, on Appeal.

This was an application for a writ of mandamus by the solicitor of the Eighth Judicial Circuit to compel the respondent as Judge of the County Court of Cullman County to reinstate on the docket of that Court divers criminal cases charging the violation of the prohibition law. The Supreme Court of Alabama in the 48 So. Rep. 1035 held that the question raised with reference to the validity of the prohibition law of that county could not be reviewed for the reason that the case was improperly brought in the name of the Solicitor, whereas it should have been brought in the name of the Attorney General.

State ex rel Collman v. Pitts, Probate Judge.

In the Supreme Court of Alabama, on Appeal.

This proceeding was commenced in the City Court of Selma by a petition for mandamus by the State on the

relation of Collman against Pitts, Probate Judge, to compel the respondent as such Probate Judge, to issue a license to petitioner to sell liquor. From an order denying the writ, the petitioner appealed to the Supreme Court of Alabama, 160 Ala. 133. This court there discussed at length the Act of 1907, Special Acts, p. 71, known as the State-wide prohibition law, and held the same to be a valid enactment of the legislature and that it was a general law although its operation was postponed as to certain counties in the State. This decision has been followed in later cases by the Supreme Court involving the same point.

Tool v. The State.

In the Supreme Court of Alabama, on Appeal.

This was a proceeding in rem commenced in the City Court of Montgomery by the State against 114 barrels of beer under the provisions of the act of August 25, 1909, known as the Fuller Bill (Acts Spec. Session 1909, p. 63). At the trial of this case in the lower court W. J. Tool entered his claim to the property. The lower court sustained the contention of the State and declared the liquor forfeited and entered an order providing for its destruction. The claimant appealed to the Supreme Court of Alabama where the judgment of the lower court was affirmed; however, the claimant has filed his application in this court for a rehearing and the case is now pending on rehearing.

Alford, Judge, v. The State of Alabama, ex rel., Alex.
M. Garber, Attorney General.

In the Supreme Court of Alabama, on Appeal.

This proceeding was commenced in the City Court of Mobile by a petition for a writ of mandamus to compel J. B. Alford, as Judge of the Inferior Court of Mobile, to reinstate fourteen causes, charging violations of the prohibition laws, on the docket of said court, the prosecutions having been commenced in the inferior court on affidavit and warrant returnable to that court. The City Court of Mobile issued the writ prayed for and the petitioner appealed to the Supreme Court of Alabama. This court in a recent decision discussed at length the questions raised and affirmed the ruling of the lower court, holding that section 32 of the Act of Aug. 25, 1909, Gen. Acts 1909, p. 63, commonly known as the Fuller Act, did not deprive the defendant of the Constitutional right of trial by jury. The case has not been reported.

III—A

GENERAL STATEMENT

SHOWING CHARACTER AND RESULTS OF PROSECUTIONS IN
THE ENTIRE STATE FOR TWO YEARS ENDING
SEPTEMBER 30, 1910.

III--(A.)

GENERAL STATEMENT.

Showing Character and Results of Prosecutions in the Entire State for Two Years Ending September 30th, 1908.

CHARACTER OF OFFENSE.	No. cases disposed of	Convictions	Acquittals	Nolle proseques	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Abandonment -----	6	1	3	2	---	---	---	---	---	1	---	---
Abusive letter -----	2	1	1	---	---	---	---	---	---	1	---	---
Abortion -----	3	2	1	---	---	---	2	---	---	---	---	---
Abusive language -----	1,232	638	200	354	40	---	---	52	12	580	---	---
Adultery and fornication -----	242	83	58	98	3	---	---	23	2	40	---	---
Affray -----	67	32	10	20	5	---	---	5	2	25	---	---
Allowing minor to play pool -----	42	9	14	19	---	---	---	3	---	12	---	---
Aiding escape -----	21	8	4	8	1	---	3	3	---	2	---	---
Allowing stock to run at large -----	2	2	---	---	---	---	---	---	---	2	---	---
Arson, first degree -----	20	12	6	1	1	---	12	---	---	---	---	---
Arson, second degree -----	28	15	8	5	---	---	13	2	---	---	---	---
Arson, third degree -----	8	5	3	---	---	---	---	4	---	---	---	---
Assault -----	118	65	11	34	8	---	---	16	---	59	---	---
Assault and battery -----	1,664	806	287	481	90	---	---	164	22	607	---	---

Assault and battery with weapon	903	647	102	125	29	3	123	7	497
Assault, intent to murder	476	224	68	135	49	134	72	1	19
Assault, intent to ravish	38	21	1	12	4	17	3		
A. I. O. L.	18	14	1	3			3		11
A. P. F.	1	1				5	1		1
Assault, intent to rob	6	6				1			
Attempt at arson	1		1						
Attempt at burglary	8	8				5	2		3
Attempt to commit a felony	2	2					2		
Attempt at larceny	7	5		2					5
Attempt at poison	19	6		12	1	1			5
Betting on election	11	9		2			1		8
Betting at cards	27	24	1	2			12		1
Blackmail	2			2					
Betting with minor	11	1	1	9					1
Bastardy	40	18	6	8	8		3		16
Betting in public places	34	2		32			1		1
Beating way on train	12	11		1			5	2	4
Bigamy	17	7	2	7	1	6	1		
Bestiality	1	1					1		
Breaking fence	4	1	1	2					1
Breaking the peace	21			21					
Burglary	471	313	60	90	8	204	104	2	3
Burglary and grand larceny	243	147	31	37	28	61	84	1	
Burglary, grand larceny and receiving stolen goods	11	10		1		10			
Burglary in railroad car	4	4				3			1

[illegible]

GENERAL STATEMENT.—Continued.

CHARACTER OF OFFENSE.	No. of cases disposed of	Convictions	Acquittals	Nolle Proseques	Abated or withdrawn	No. of sentences to				Fines Paid or Secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Forgery, third degree -----	15	14	---	1	---	---	---	5	7	4	---	---
Failure to report death -----	1	---	---	1	---	---	---	---	---	---	---	---
Failure to report health officer -----	2	2	---	---	---	---	---	---	---	2	---	---
Fortune telling without license -----	4	3	---	1	---	---	---	---	---	3	---	---
Gaming -----	1,339	810	146	322	61	---	---	208	17	584	---	---
Gaming on Sunday -----	71	47	6	17	1	---	---	2	---	45	---	---
Gaming in public place -----	1	1	---	---	---	---	---	---	---	1	---	---
Giving liquor to minor -----	6	2	2	2	---	---	---	---	---	2	---	---
Interfering with officer -----	2	---	---	2	---	---	---	---	---	---	---	---
Indecent exposure of person -----	4	---	---	4	---	---	---	---	---	---	---	---
Hauling on pike without license -----	20	5	1	14	---	---	---	---	---	---	---	---
Horse racing -----	6	2	3	1	---	---	---	---	---	5	---	---
Horse trading without license -----	2	---	---	2	---	---	---	---	---	2	---	---
Intimidating -----	83	4	2	76	1	---	---	---	---	4	---	---
Injuring telegraph wires -----	2	---	2	---	---	---	---	---	---	---	---	---
Injuring property -----	12	4	5	3	---	---	---	---	---	3	---	---

ATTORNEY GENERAL.

XCIII

[illegible]

GENERAL STATEMENT.—Continued.

CHARACTER OF OFFENSE.	No. of cases disposed of	Convictions	Acquittals	Nolle Proseques	Abated or withdrawn	No. of sentences to				Fines Paid or Secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Miscegenation -----	21	6	5	8	2	—	6	—	—	—	—	—
Moving personal property -----	1	—	—	1	—	—	—	—	—	—	—	—
Murder, first degree -----	239	124	66	35	14	25	96	—	—	—	—	—
Murder, second degree -----	229	153	40	31	15	—	142	4	3	4	—	—
Midwife, failure to report -----	2	—	—	2	—	—	—	—	—	—	—	—
Nuisance -----	1	—	—	—	1	—	—	—	—	—	—	—
Obstructing stream -----	1	—	—	1	—	—	—	—	—	—	—	—
Obstructing public road -----	27	10	4	12	1	—	1	—	—	9	—	—
Obstructing railroad -----	4	3	1	—	—	—	2	—	—	1	—	—
Obtaining money or goods under false pre- tense -----	36	17	7	8	4	—	4	6	—	7	—	—
Official neglect -----	1	—	1	—	—	—	—	—	—	—	—	—
Obtaining board by fraud -----	3	1	1	—	1	—	—	—	—	1	—	—
Ordering liquor -----	1	—	—	1	—	—	—	—	—	—	—	—
Operating slot machine -----	4	4	—	—	—	—	—	—	—	4	—	—
Overseer, neglect of duty -----	16	6	4	6	—	—	—	—	—	6	—	—

Perjury	67	6	9	45	7	6	1	1
Peace proceedings	5	1	3	1				1
Playing cards on Sunday	9	8		1				8
Playing cards, public place	37	30	4	3			4	26
Peddling without license	4	2		2				2
Pistol in possession off premises	2	2					2	
Poisoning stream	1	1				1		
Poisoning animal	1		1					
Practicing dentistry without a license	1			1				
Practicing medicine without a license	49	25	4	20		6		19
Purloining examination papers	1	1						1
Presenting gun	186	45	26	110	5		8	1 46
Public drunkenness	635	387	38	186	24		19	11 338
Putting out poison	1	1						1
Racing on public road	2	1	1					1
Rape	37	7	7	23		6		
Receiving stolen property	74	19	17	31	7	1	6	4 10
Rescuing prisoner	1	1						1
Reckless driving	4	3	1				1	2
Removing mortgaged property	3	2		1			1	1
Removing property under lien	46	15	12	19		1	1	13
Refusing to assist sheriff	2			2				
Resisting officer	41	14	9	17	1		5	9
Riding motorcycle unlawfully	1	1						1
Robbery	82	47	12	21	2	1	46	
Retailing	174	75	29	67	3		9	72
Seduction	36	9	7	16	4	7	2	2

GENERAL STATEMENT—Continued.

CHARACTER OF OFFENSE.	No. of cases disposed of	Convictions	Acquittals	Nolle Proseques	Abated or withdrawn	No. of sentences to				Fines Paid or Secured	Insane Asylum	Paroled
						Death	Penitentiary	Hard Labor	Jail			
Stock running at large -----	1	1	1									
Selling diseased meat -----	3	2		1						2		
Selling personal property -----	1	1						1				
Soliciting insurance -----	1	1						1				
Selling cocaine -----	2	1	1							1		
Selling liquor to minor -----	22	5	2	15						5		
Shooting into dwelling -----	32	19	4	9						19		
Selling cigarettes to minor -----	82	29	2	30	21			4		25		
Sending abusive letter -----	1			1								
Sunday breaking -----	1	1								1		
Selling examination papers -----	3			3								
Selling on Sunday -----	2	1		1						1		
Selling mortgaged property -----	110	32	15	62	1		2	5		26		
Swapping horses without license -----	1			1								
Selling rent cotton -----	1	1								1		
Selling fertilizer without license -----	1			1								

Sending threatening letter	3	2	1	1	1	2	2
Severing and taking property	4	2	2	2	2	2	2
Seining creek	3	2	2	2	2	2	2
Shooting across public road	116	29	17	65	5	24	24
Shooting into passenger train	5	2	1	2	2	2	2
Shooting on Sunday	14	8	2	4	4	8	8
Slander	1	1	1	1	1	1	1
Sending challenge	1	1	1	1	1	1	1
Sodomy	7	3	4	3	3	3	3
Selling live stock without license	2	1	1	1	1	1	1
Taking girl under 18 for prostitution	1	1	1	1	1	1	1
Temporary use of animal	12	8	3	1	1	8	8
Temporary use of property	8	6	2	2	2	5	5
Tampering with meter	1	1	1	1	1	1	1
Throwing missile at train	4	3	1	1	1	2	2
Trading mortgaged property	1	1	1	1	1	1	1
Trespass after warning	327	38	52	225	12	29	29
Train wrecking	1	1	1	1	1	1	1
Trespassing on public property	50	8	9	33	7	7	7
Tampering with railroad track	5	5	5	5	5	5	5
Unlawful injury to animal	36	17	12	6	1	14	14
Unlawfully using animal	4	3	1	1	1	3	3
Unlawfully riding on train	123	112	3	8	5	11	11
Unlawfully entering office	1	1	1	1	1	1	1
Unlawfully taking animal	4	2	2	2	2	2	2
Unlawfully killing dog	3	2	1	1	1	2	2
Unlawful assembly	7	7	7	7	7	7	7

GENERAL STATEMENT—Continued.

CHARACTER OF OFFENSE.	No. of cases disposed of	Convictions	Acquittals	Nolle Proseques	Abated or Withdrawn	No. of sentences to				Fines Paid or Secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Unlawfully disposing of mortgaged property	1	—	—	1	—	—	—	—	—	—	—	—
Using firearms public place	5	—	—	5	—	—	—	—	—	—	—	—
Vagrancy	837	209	147	272	209	—	—	112	9	88	—	—
Violating automobile law	93	15	1	20	3	—	—	—	—	15	—	—
Violating convict contract	3	3	—	—	—	—	—	3	—	—	—	—
Violating court contract	10	6	—	4	—	—	—	—	—	6	—	—
Violating election law	4	3	—	1	—	—	—	—	—	3	—	—
Violating game and fish law	174	54	40	58	22	—	—	2	—	51	—	—
Violating prohibition law	3,005	1,018	418	1,049	520	—	—	431	2 9	998	—	—
Violating revenue law	352	38	49	227	38	—	—	4	—	38	—	—
Violating Sunday law	1 67	126	11	29	1	—	—	6	—	120	—	—
Violating stock law	32	21	5	6	—	—	—	2	—	19	—	—
Violating sunrise and sunset law	2	1	1	—	—	—	—	—	—	1	—	—
Violating written contract	136	79	25	28	4	—	—	54	—	35	—	—
Violating harbor law	1	—	—	—	1	—	—	—	—	—	—	—
Violating insurance law	3	—	—	2	1	—	—	—	—	—	—	—

Violating contract com. fees	1	1	---	---	---	---	---	---	1	---
Violating forestry law	1	---	---	---	1	---	---	---	---	---
Violating dispensary law	1	---	---	1	---	---	---	---	---	---
Violating quarantine law	6	1	1	3	1	---	---	---	1	---
Violating pistol law	2	---	---	2	---	---	---	---	---	---
Total	20,066	9,490	2,891	6,132	1,550	27	1,331	2,516	1,795	165

Percentage of convictions in cases disposed of, 48.

Predominant crime, Violation of Prohibition Laws.



III—B

GENERAL STATEMENT

**SHOWING CHARACTER AND RESULTS OF PROSECUTIONS IN
EACH JUDICIAL CIRCUIT AND IN EACH CITY OR CRIM-
INAL COURT OR OTHER COURT HAVING A SEPA-
RATE SOLICITOR FOR TWO YEARS ENDING
SEPTEMBER 30, 1910.**

ATTORNEY GENERAL.

CIII

FIRST JUDICIAL CIRCUIT.

Composed of the Counties of Choctaw, Clarke, Marengo and Monroe.
Hon. O. L. Gray, Solicitor, Butler, Ala.

CHARACTER OF OFFENSE.	No. cases disposed of	Convictions	Acquittals	Nolle proseques	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Adultery and fornication	4	2	---	2	---	---	---	---	---	2	---	---
Arson, first degree	3	3	---	---	---	---	3	---	---	---	---	---
Arson, second degree	4	1	2	1	---	---	1	---	---	---	---	---
Assault and battery	7	7	---	---	---	---	---	---	---	7	---	---
Assault and battery with weapon	17	17	---	---	---	---	---	1	---	16	---	---
Assault, intent to murder	18	9	1	6	2	---	3	6	---	---	---	---
Assault, intent to rob	1	1	---	---	---	---	---	---	---	1	---	---
Attempt at larceny	6	4	---	2	---	---	---	---	---	4	---	---
Bastardy	1	---	---	1	---	---	---	---	---	---	---	---
Bigamy	2	---	2	---	---	---	---	---	---	---	---	---
Burglary	10	9	1	---	---	---	6	4	---	---	---	---
Concealed weapons	18	14	---	2	2	---	---	3	---	7	---	---
Cruelty to animals	2	2	---	---	---	---	---	---	---	2	---	---
Defaulting road overseer	1	1	---	---	---	---	---	---	---	1	---	---
Defaulting road hand	11	---	---	---	11	---	---	---	---	---	---	---
Disorderly conduct	7	---	---	7	---	---	---	---	---	---	---	---
Embezzlement	10	2	1	5	2	---	1	---	---	1	---	---
False pretense	5	3	---	2	---	---	---	---	---	3	---	---
Forgery, second degree	3	1	---	2	---	---	---	1	---	---	---	---
Forgery, third degree	3	3	---	---	---	---	---	1	---	2	---	---
Gaming	29	28	---	1	---	---	---	---	---	28	---	---
Larceny, grand	23	15	2	2	4	---	2	14	---	---	---	---
Larceny, petit	14	13	---	1	---	---	---	1	---	12	---	---
Malicious mischief	1	1	---	---	---	---	---	---	---	1	---	---
Manslaughter, first degree	2	2	---	---	---	---	2	---	---	---	---	---

FIRST JUDICIAL CIRCUIT—Continued.

CHARACTER OF OFFENSE.	No. cases disposed of	Convictions	Acquittals	Nolle proseques	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Manslaugh'r, sec'd degree	1	1	---	---	---	---	---	---	---	1	---	---
Murder, first degree	17	7	4	4	2	1	6	---	---	*	---	---
Murder, second degree	14	11	2	1	---	---	10	---	---	---	---	---
Obstructing public road	4	4	---	---	---	---	---	---	---	4	---	---
Presenting gun	1	1	---	---	---	---	---	---	---	1	---	---
Rape	4	1	1	2	---	* 1	---	---	---	---	---	---
Receiving stolen prop'y	3	3	---	---	---	---	---	---	---	3	---	---
Remov'g prop'y under lien	1	---	1	---	---	---	---	---	---	---	---	---
Resisting officer	1	1	---	---	---	---	---	---	---	1	---	---
Robbery	1	1	---	---	---	---	1	---	---	---	---	---
Selling diseased meat	3	2	---	1	---	---	---	---	---	2	---	---
Selling mortg'd property	3	---	---	3	---	---	---	---	---	---	---	---
Shoot'g across pub. road	1	1	---	---	---	---	---	---	---	1	---	---
Unlawf'l injury to animal	2	1	1	---	---	---	---	---	---	1	---	---
Violating pistol law	2	---	---	2	---	---	---	---	---	---	---	---
Violat'g prohibit'n law	81	27	3	32	19	---	---	7	1	19	---	---
Violating Sunday law	1	1	---	---	---	---	---	---	---	1	---	---
Violating sunrise & sun- set law	1	---	1	---	---	---	---	---	---	---	---	---
Violat'n written contract	2	1	---	---	1	---	---	---	---	1	---	---
Total	345	201	22	79	43	1	35	38	1	122	---	---

Percentage of convictions in cases disposed of, 57.

Predominant crime, Violating prohibition law.

*Sentenced East Lake Reformatory.

ATTORNEY GENERAL.

CV

SECOND JUDICIAL CIRCUIT.

Composed of the Counties of Lowndes, Crenshaw, Escambia, Conecuh
and Butler.

Hon. C. R. Bricken, Solicitor, Luverne, Ala.

CHARACTER OF OFFENSE.	No. cases disposed of	Convictions	Acquittals	Nolle proseques	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Abandonment -----	1			1								
Abusive language -----	60	55	1	4				1		50		
Adultery and fornication -----	6	5		1				4		1		
Affray -----	1	1								1		
Arson, first degree -----	4	4					4					
Arson, second degree -----	3	3					3					
Arson, third degree -----	1	1						1				
Assault and battery -----	25	21	2	2				3		18		
Assault and battery with weapon -----	77	74	1	2				17		53		
Assault, intent to murder -----	25	16	1	7	1	14	2					
Assault, intent to ravish -----	5	5				5						
Attempt at burglary -----	1	1						1				
Bastardy -----	1	1						1				
Betting at cards -----	1	1						1				
Bigamy -----	1			1								
Burglary -----	19	16		3			9	7				
Burglary & grand larceny -----	9	9					2	7				
Carrying pistol under 24 inches in length -----	3	1		2						1		
Concealed weapons -----	61	42	7	12				16		23		
Concealing stolen prop'ty -----	1	1								1		
Disturb'g religious wors'p -----	4	4								4		
Doing business without license -----	1			1								

SECOND JUDICIAL CIRCUIT—Continued.

CHARACTER OF OFFENSE.	No. cases disposed of					No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
		Convictions	Acquittals	Nolle proseques	Abated or withdrawn	Death	Penitentiary	Hard Labor	Jail			
Disp'g of pro'y under lien	2	1		1						1		
Disturbing school	1		1									
Embezzlement	2			1	1							
Escape	3	2		1						2		
Enticing labor	2	2								2		
Fail'g to repair pub. road	1		1									
False pretense	6	3	1	2						3		
Failure to report, Health Officer	2	2								2		
Forfeiture final	6	6								6		
Forgery, second degree	7	6		1			2	4				
Forgery, third degree	3	3						3				
Gaming	17	15		2				1		14		
Injuring animals	2	2								2		
Incest	1	1						1				
Larceny, grand	19	19					4	15				
Larceny, petit	23	16	1	6				4		12		
Mayhem	1	1								1		
Moving personal property	1			1								
Midwife, failure to report	2			2								
Manslaughter, first degree	7	5	1	1			1	4				
Manslaughter, sec'd degree	1	1						1				
Miscegenation	2	2					2					
Murder, first degree	23	13	8	1	1	2	11					
Murder, second degree	11	8	1	2			8					
Obstructing public road	1	1								1		
Perjury	2			2								
Practicing medicine without a license	1			1								

SECOND JUDICIAL CIRCUIT—Continued.

CHARACTER OF OFFENSE.	No. cases disposed of					No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
		Convictions	Acquittals	Nolle prosequies	Abated or withdrawn	Death	Penitentiary	Hard Labor	Jail			
Presenting gun -----	6	3	1	2						3		
Public drunkenness ----	13	9		4						9		
Rape -----	2			2								
Reckless driving -----	1	1								1		
Robbery -----	1	1					1					
Seduction -----	2			2								
Selling liquor -----	2			2								
Selling liquor to minor--	1	1								1		
Selling mortgaged prop'y-	7	5		2				1		5		
Shooting across pub. road	5	5								5		
Sunday breaking -----	1	1								1		
Tamper'g with R. R. track	3	3						3				
Temporary use of prop'y-	1	1						1				
Trespass after warning--	3	3								3		
Trespass -----	2									2		
Unlawful injury to animal	3	2		1						2		
Unlawfully rid'g on train	8	8						3		5		
Violating game law -----	5	5								5		
Violating prohibition law	5	40	35	15	1			11		31		
Violating revenue law --	1	1								1		
Violating Sunday law ---	29	29						2		27		
Violating stock law ----	1	1								1		
Violating written contract	4	4						1		3		
Total-----	619	495	30	90	4	2	66	116		303		

Percentage of convictions in cases disposed of, 80.

Predominant crime, Assault and battery with weapon.

THIRD JUDICIAL CIRCUIT.

Composed of the Counties of Barbour, Bullock, Dale Henry and Russell.
Hon. H. B. Stegall, Solicitor, Ozark, Ala.

CHARACTER OF OFFENSE.	No. cases disposed of	Convictions	Acquittals	Nolle prosequies	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Abusive language -----	39	25	5	9						25		
Adultery and fornication	7	4	1	2				1		3		
Allow. minor to play pool	1			1								
Aiding escape -----	1	1					1					
Arson, first degree -----	1	1					1					
Assault -----	1			1								
Assault and battery -----	139	112	4	21	2			9		100		
Assault, intent to murder	39	21	1	15	2		14	5		1		
Attempt at arson -----	1		1									
Attempt at larceny -----	1	1								1		
Betting at cards -----	1			1								
Bastardy -----	8	2	2	1	3					2		
Bestiality -----	1	1						1				
Burglary -----	49	29	3	15	2		25	1				
Carnal knowledge, girl under 14 years -----	5	3		2			2	1				
Concealed weapons -----	66	40	6	20				6		34		
Compounding felony -----	1			1								
Cruelty to animals -----	9	4	2	3				1		3		
Defamation -----	3			3								
Defaulting juror -----	2			2								
Defaulting road hand -----	1			1								
Defaulting witness -----	17			17								
Destroying fence -----	3	1		2						1		
Disturb. religious worship	1	1						1				
Dispos. of prop. under lien	5	2		3					1	2		

THIRD JUDICIAL CIRCUIT—Continued.

CHARACTER OF OFFENSE.	No. cases disposed of						No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
		Convictions	Acquittals	Nolle proseques	Abated or withdrawn		Death	Penitentiary	Hard Labor	Jail			
Embezzlement	2	1	---	1	---	---	---	---	1	---	---	---	---
Enticing labor	2	2	---	---	---	---	---	---	---	---	2	---	---
Fail. to repair pub. road	6	2	1	3	---	---	---	---	1	---	1	---	---
False pretense	11	6	---	3	2	---	---	---	3	1	2	---	---
Forgery, first degree	1	1	---	---	---	---	1	---	---	---	---	---	---
Gaming	9	2	1	6	---	---	---	---	---	---	2	---	---
Gaming on Sunday	21	15	1	5	---	---	---	---	1	---	14	---	---
Injuring property	1	---	1	---	---	---	---	---	---	---	---	---	---
Injuring animals	4	3	1	---	---	---	---	---	---	---	3	---	---
Larceny, grand	30	17	4	9	---	15	---	1	---	---	---	---	---
Larceny, petit	41	27	4	8	2	---	---	6	6	15	---	---	---
Larceny from the person	1	1	---	---	---	---	---	---	---	---	1	---	---
Manslaughter, first degree	8	5	---	3	---	3	---	2	---	---	---	---	---
Miscegenation	1	---	---	1	---	---	---	---	---	---	---	---	---
Murder, first degree	7	5	1	1	---	1	4	---	---	---	---	---	---
Murder, second degree	15	9	2	4	---	8	---	---	---	1	---	---	---
Obstructing railroad	2	1	---	1	---	1	---	---	---	---	---	---	---
Perjury	2	---	---	2	---	---	---	---	---	---	---	---	---
Practicing dentistry with- out a license	1	---	---	1	---	---	---	---	---	---	---	---	---
Practicing medicine with- out a license	1	---	---	1	---	---	---	---	---	---	---	---	---
Presenting gun	9	4	1	4	---	---	---	1	---	3	---	---	---
Public drunkenness	11	11	---	---	---	---	---	---	---	11	---	---	---
Rape	12	---	2	10	---	---	---	---	---	---	---	---	---
Retailing	108	53	16	39	---	6	---	53	---	---	---	---	---
Robbery	3	2	---	1	---	2	---	---	---	---	---	---	---
Seduction	6	2	1	3	---	2	---	---	---	---	---	---	---
Soliciting liquor orders	1	1	---	---	---	---	---	---	---	1	---	---	---

THIRD JUDICIAL CIRCUIT—Continued.

CHARACTER OF OFFENSE.	No. cases disposed of	Convictions	Acquittals	Nolle prosequies	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Selling mortgaged prop....	14	3	1	10	---	---	---	---	---	3	---	---
Selling personal property	1	1	---	---	---	---	---	1	---	---	---	---
Send. threat. letter.....	1	1	---	---	---	---	---	---	---	1	---	---
Shooting across pub. road	3	1	---	2	---	---	---	---	---	1	---	---
Trespass after warning....	1	---	1	---	---	---	---	---	---	---	---	---
Violating game law.....	3	2	---	1	---	---	---	---	---	2	---	---
Violating revenue law....	3	1	---	2	---	---	---	---	---	1	---	---
Violating Sunday law....	35	24	---	10	1	---	---	3	---	21	---	---
Violating written contr't	11	6	1	4	---	---	---	1	---	5	---	---
Total.....	790	457	64	255	14	1	78	53	8	315	---	---

Percentage of convictions in cases disposed of, 58.

Predominant crime, Assault and battery.

FOURTH JUDICIAL CIRCUIT.

Composed of the Counties of Bibb, Dallas, Hale, Perry and Wilcox.
Hon. J. F. Thompson, Solicitor, Centreville, Ala.

CHARACTER OF OFFENSE.	No. cases disposed of	Convictions	Acquittals	Nolle proseques	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Abusive language -----	1	1	---	---	---	---	---	---	---	1	---	---
Adultery and fornication	1	1	---	---	---	---	---	1	---	---	---	---
Allowing stock to run at large -----	1	1	---	---	---	---	---	---	---	1	---	---
Arson, first degree -----	1	---	1	---	---	---	---	---	---	---	---	---
Arson, second degree -----	3	2	1	---	---	---	2	---	---	---	---	---
Arson, third degree -----	4	2	2	---	---	---	---	1	---	1	---	---
Assault and battery -----	22	19	---	3	---	---	---	3	1	15	---	---
Assault and battery with weapon -----	67	65	1	1	---	---	---	20	---	45	---	---
Assault, intent to murder	28	14	4	9	1	---	8	6	---	---	---	---
Burglary -----	50	40	4	6	---	---	4	34	2	---	---	---
Carnal knowledge, girl under ten -----	1	---	1	---	---	---	---	---	---	---	---	---
Carrying pistol under 24 inches in length -----	1	---	---	1	---	---	---	---	---	---	---	---
Concealed weapons -----	31	25	---	6	---	---	---	9	---	16	---	---
Cruelty to animals -----	3	2	---	1	---	---	---	1	---	1	---	---
Defamation -----	1	1	---	---	---	---	---	---	---	1	---	---
Defaulting road hand -----	1	1	---	---	---	---	---	---	---	1	---	---
Disturbing relig's worship	1	1	---	---	---	---	---	---	---	1	---	---
Embezzlement -----	3	---	1	2	---	---	---	---	---	---	---	---
Escape -----	3	3	---	---	---	---	---	3	---	---	---	---
Enticing labor -----	1	---	---	1	---	---	---	---	---	---	---	---
False pretense -----	22	15	---	7	---	---	---	5	---	10	---	---
Forgery, first degree -----	7	6	---	1	---	---	2	4	---	---	---	---
Forgery, second degree --	4	4	---	---	---	---	3	1	---	---	---	---

FOURTH JUDICIAL CIRCUIT—Continued.

CHARACTER OF OFFENSE.	No. cases disposed of	Convictions	Acquittals	Nolle prosequies	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Forgery, third degree----	1	1	---	---	---	---	---	---	1	---	---	---
Larceny, grand -----	61	45	2	13	1	---	18	25	---	---	---	---
Larceny, petit -----	53	51	---	2	---	---	---	22	---	29	---	---
Manslaughter, 1st degree	16	14	2	---	---	---	10	4	---	---	---	---
Manslaughter, sec. degree	11	9	---	2	---	---	1	5	---	3	---	---
Miscegenation -----	3	---	1	2	---	---	---	---	---	---	---	---
Murder, first degree ----	17	12	2	3	---	5	7	---	---	---	---	---
Murder, second degree---	13	10	1	2	---	---	10	---	---	---	---	---
Perjury -----	3	2	1	---	---	---	2	---	---	---	---	---
Playing cards, pub. place	7	6	---	1	---	---	---	---	---	6	---	---
Presenting gun -----	2	1	---	1	---	---	---	---	---	1	---	---
Rape -----	3	2	---	1	---	---	2	---	---	---	---	---
Receiving stolen property	3	2	---	1	---	---	---	1	---	1	---	---
Remov'g mortg'd prop'rt'y	3	2	---	1	---	---	---	1	---	1	---	---
Resisting officer -----	1	1	---	---	---	---	---	1	---	---	---	---
Shooting across pub. road	3	1	---	2	---	---	---	---	---	1	---	---
Seiz'g orders for whiskey	6	5	---	1	---	---	---	---	---	5	---	---
Train wrecking -----	1	1	---	---	---	---	1	---	---	---	---	---
Tampering with railroad switch -----	1	1	---	---	---	---	---	1	---	---	---	---
Trespass after warning--	1	1	---	---	---	---	---	---	---	1	---	---
Unlawful injury to animal	1	1	---	---	---	---	---	1	---	---	---	---
Vagrancy -----	1	1	---	---	---	---	---	1	---	---	---	---
Violating prohibition law	105	83	7	14	1	---	---	33	---	48	---	---
Violating stock law ----	1	1	---	---	---	---	---	---	---	1	---	---
Total-----	574	456	31	84	3	5	70	183	4	190	---	---

Percentage of convictions in cases disposed of, 79.

Predominant crime, Violating prohibition law.

FIFTH JUDICIAL CIRCUIT.

Composed of the Counties of Chambers, Macon, Randolph and Tallapoosa.
Hon. W. B. Bowling, Solicitor, Dadeville, Ala.

CHARACTER OF OFFENSE.	No. cases disposed of	Convictions	Acquittals	Nolle proseques	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Abusive language -----	25	19	1	5				1		18		
Adultery and fornication -----	15	8	2	5						8		
Affray -----	2	1		1						1		
Aiding escape -----	1	1					1					
Arson, second degree -----	2	2					2					
Assault and battery -----	15	12		3						7		
Assault and battery with weapon -----	51	48	2	1				4		30		
Assault, intent to murder -----	10	5	1	3	1		5					
Bastardy -----	1	1								1		
Bigamy -----	1	1					1					
Burglary -----	22	19		3			19					
Carnal knowledge, girl un- der ten -----	3	2	1				2					
Concealed weapons -----	27	16	4	5	2				1	16		
Cruelty to animals -----	3	1	1		1					1		
Defamation -----	2	1	1							1		
Disturbing relig's worship -----	26	24	2					1		23		
Dispos. of prop. under lien -----	1			1								
Disturbing school -----	1	1								1		
Embezzlement -----	7	3	1	3			3					
Enticing labor -----	1	1								1		
Fail'g to repair pub. road -----	9	3	1	5						2		
False pretense -----	4	3		1			1			2		
Failure duty as road over- seer -----	5		1	4								

FIFTH JUDICIAL CIRCUIT—Continued.

CHARACTER OF OFFENSE.	No. cases disposed of	Convictions	Acquittals	Nolle proseques	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Forgery, first degree	4	2	1	1			2					
Forgery, second degree	1			1								
Gaming	17	14	1	2						14		
Incest	2	1	1				1					
Larceny, grand	30	23	3	2	2		23					
Larceny, petit	14	11	3					1		10		
Malic's injury to animal	1	1								1		
Manslaughter, first degree	21	18	2	1			18					
Manslaughter, sec. degree	2	1		1			1					
Miscegenation	1		1									
Murder, first degree	11	7	2		2		7					
Murder, second degree	16	7	6	3			7					
Obstructing public road	2	1	1								1	
Obstructing railroad	1	1					1					
Perjury	6		1	5								
Playing cards, pub. place	1	1								1		
Practicing medicine with- out a license	1	1								1		
Presenting gun	2			2								
Public drunkenness	11	4		6	1					4		
Rape	1	1					1					
Receiving stolen property	1	1						1				
Riding train without pay- ing fare	2	2						2				
Resisting officer	1	1								1		
Rescuing prisoner	1	1								1		
Robbery	3	1	2				1					
Seduction	3	1		1	1		1					
Selling mortgaged prop'y	19	8	2	9			1			7		

FIFTH JUDICIAL CIRCUIT—Continued.

CHARACTER OF OFFENSE.	No. cases disposed of	Convictions	Acquittals	Nolle proseques	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Shooting into dwelling---	9	8	---	1	---	---	---	---	---	8	---	---
Sending threat'ning letter	1	1	---	---	---	---	---	---	1	1	---	---
Temporary use of prop'y	2	1	---	1	---	---	---	---	---	---	---	---
Trespass after warning---	2	---	2	---	---	---	---	---	---	---	---	---
Violating court contract---	2	1	---	1	---	---	---	---	---	1	---	---
Violating game law -----	6	2	2	2	---	---	---	---	---	2	---	---
Violating labor law -----	9	4	2	2	1	---	---	---	---	3	---	---
Violating prohibition law	100	62	15	19	4	---	---	21	6	42	---	---
Violating revenue law --	3	1	1	1	---	---	---	---	---	1	---	---
Violating Sunday law----	3	3	---	---	---	---	---	---	---	3	---	---
Violating stock law -----	2	---	1	1	---	---	---	---	---	---	---	---
Total -----	548	364	67	102	15	---	98	31	8	214	---	---

Percentage of convictions in cases disposed of, 66.

Predominant crime, Violating prohibition law.

SIXTH JUDICIAL CIRCUIT.

Composed of the Counties of Fayette, Greene, Lamar, Pickens, Sumter
and Tuscaloosa.

Hon. W. B. Oliver, Solicitor, Tuscaloosa, Ala.

Incomplete—Reports not obtainable from Solicitor.

CHARACTER OF OFFENSE.	No. cases disposed of	Convictions	Acquittals	Nolle proseques	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Assault and battery-----	10	8	---	2	---	---	---	---	---	8	---	---
Assault and battery with weapon -----	12	11	---	1	---	---	---	3	---	8	---	---
Assault, intent to murder	1	1	---	---	---	---	1	---	---	---	---	---
A. P. F. -----	1	1	---	---	---	---	---	1	---	---	---	---
Attempt at burglary-----	4	4	---	---	---	---	1	---	---	3	---	---
Burglary -----	3	3	---	---	---	---	3	---	---	---	---	---
Concealed weapons -----	18	15	1	1	1	---	---	2	---	13	---	---
Defaulting road hand-----	2	1	---	1	---	---	---	---	---	1	---	---
Disturb. religious worship	6	6	---	---	---	---	---	---	---	6	---	---
False pretense -----	5	5	---	---	---	---	---	1	---	4	---	---
Forgery, second degree--	2	2	---	---	---	---	2	---	---	---	---	---
Gaming -----	2	2	---	---	---	---	---	1	---	1	---	---
Giving liquor to minor----	2	2	---	---	---	---	---	---	---	2	---	---
Incest -----	1	1	---	---	---	---	1	---	---	---	---	---
Larceny, grand -----	2	2	---	---	---	---	1	1	---	---	---	---
Larceny, petit -----	1	1	---	---	---	---	---	1	---	---	---	---
Manslaughter, first degree	2	2	---	---	---	---	2	---	---	---	---	---
Murder, second degree --	2	2	---	---	---	---	2	---	---	---	---	---
Peddling without license--	1	1	---	---	---	---	---	---	---	1	---	---
Presenting gun -----	1	1	---	---	---	---	---	---	---	1	---	---
Public drunkenness -----	8	8	---	---	---	---	---	---	---	8	---	---
Remov. prop. under lien--	5	5	---	---	---	---	---	---	---	5	---	---
Robbery -----	1	1	---	---	---	---	1	---	---	---	---	---

SIXTH JUDICIAL CIRCUIT—Continued.

CHARACTER OF OFFENSE.	No. cases disposed of	Convictions	Acquittals	Nolle proseques	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Shooting across pub. road	1	1	---	---	---	---	---	---	---	1	---	---
Unlaw'l injury to animal	1	1	---	---	---	---	---	---	---	1	---	---
Violating prohibition law	23	19	---	---	4	---	---	14	---	5	---	---
Violating stock law-----	13	13	---	---	---	---	---	---	---	13	---	---
Violating written contract	3	3	---	---	---	---	---	1	---	2	---	---
Total-----	133	122	1	5	5	---	14	25	---	85	---	---

Percentage of convictions in cases disposed of, 91.

Predominant crime, Violating prohibition law.

SEVENTH JUDICIAL CIRCUIT.

Composed of the Counties of Calhoun, Clay, Cleburne, Shelby and Talladega.

Hon. Walter S. Smith, Solicitor, Lineville, Ala.

CHARACTER OF OFFENSE.	No. cases disposed of	No. sentences to								Fines paid or secured	Insane Asylum	Pardoned
		Convictions	Acquittals	Nolle prosequies	Abated or withdrawn	Death	Penitentiary	Hard Labor	Jail			
Abusive language	9	8	---	1	---	---	---	---	---	8	---	---
Adultery and fornication	1	1	---	---	---	---	---	1	---	---	---	---
Arson, second degree	3	2	1	---	---	---	2	---	---	---	---	---
Arson, third degree	1	1	---	---	---	---	---	1	---	---	---	---
Assault and battery	8	6	1	1	---	---	---	1	---	5	---	---
Assault and battery with weapon	6	6	---	---	---	---	---	---	---	6	---	---
Assault, intent to murder	3	2	---	---	1	---	2	---	---	---	---	---
Assault, intent to ravish	4	2	---	1	1	---	2	---	---	---	---	---
Bastardy	2	2	---	---	---	---	---	---	---	2	---	---
Burglary	4	3	1	---	---	---	3	---	---	---	---	---
Burg. and grand larc'y	1	1	---	---	---	---	1	---	---	---	---	---
Concealed weapons	8	2	4	1	1	---	---	---	---	2	---	---
Crime against nature	1	---	---	1	---	---	---	---	---	---	---	---
Disturb. religious worship	3	2	1	---	---	---	---	---	---	2	---	---
Fail. to repair pub. road	1	---	---	1	---	---	---	---	---	---	---	---
Forgery, second degree	1	1	---	---	---	---	1	---	---	---	---	---
Giving liquor to minor	1	---	1	---	---	---	---	---	---	---	---	---
Larceny, grand	13	8	1	3	1	---	8	---	---	---	---	---
Larceny, petit	5	5	---	---	---	---	---	1	4	3	---	---
Manslaughter, first degree	3	1	1	---	1	---	1	---	---	---	---	---
Murder, first degree	8	2	3	1	2	---	2	---	---	---	---	---
Murder, second degree	3	3	---	---	---	---	3	---	---	---	---	---
Obtaining money under false pretense	1	1	---	---	---	---	---	1	---	---	---	---

SEVENTH JUDICIAL CIRCUIT—Continued.

CHARACTER OF OFFENSE.	No. cases disposed of	Convictions	Acquittals	Nolle proseques	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Perjury -----	1		1									
Public drunkenness ----	27	19	2	6							14	
Rape -----	1			1								
Receiv. stolen property--	1	1						1				
Seduction -----	1	1					1					
Selling mortgaged prop'y-	1			1								
Shooting into residence--	1		1									
Shooting across pub. road	1				1							
Shoot. into pass. train---	1	1					1					
Throwing missel at train	1	1								1		
Unlawfully disposing of mortgaged property ---	1			1								
Vagrancy -----	1			1								
Violating election law---	2	2								2		
Violating prohibition law	19	5	1	13						5		
Total -----	149	89	19	33	8		27	6	4	50		

Percentage of convictions in cases disposed of, 59.

Predominant crime, Public drunkenness.

EIGHTH JUDICIAL CIRCUIT.

Composed of the Counties of Cullman, Lawrence, Limestone, Madison
and Morgan.

Hon. D. C. Almon, Solicitor, New Decatur, Ala.

CHARACTER OF OFFENSE.	No. cases disposed of	Convictions	Acquittals	Nolle proseques	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Abusive language -----	2	2								2		
Adultery and fornication	1	1								1		
Arson, first degree -----	2	2					2					
Arson, second degree -----	2	1		1			1					
Assault -----	2	2						1		1		
Assault and battery with weapon -----	22	18	2	2						18		
Assault, intent to murder	7	1	2	4			1					
Assault, intent to ravish	1	1					1					
Bigamy -----	2	1		1			1					
Burglary -----	8	8					8					
Carnal knowledge, girl under ten -----	1	1					1					
Carrying pistol over 24 inches in length -----	2	2						1		1		
Concealed weapons -----	16	6	6	4				1		5		
Disturb. religious worship	4	4								4		
Embezzlement -----	1			1								
Fail. to repair pub. road	13			13								
False pretense -----	1	1					1					
Gaming -----	4	3		1				1		2		
Keeping gaming table -----	1		1									
Larceny, grand -----	11	6	3	2			6					
Larceny, petit -----	10	7		3				5	1	1		
Malicious mischief -----	2			2								

EIGHTH JUDICIAL CIRCUIT—Continued.

CHARACTER OF OFFENSE.	No. cases disposed of	Convictions	Acquittals	Nolle prosequies	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Manslaughter, first degree	5	3	2	---	---	---	3	---	---	---	---	---
Murder, first degree	7	5	2	---	---	---	5	---	---	---	---	---
Murder, second degree	2	2	---	---	---	---	2	---	---	---	---	---
Open doors on Sunlay	1	1	---	---	---	---	---	---	---	1	---	---
Perjury	1	---	---	1	---	---	---	---	---	---	---	---
Poisoning well	1	1	---	---	---	---	1	---	---	---	---	---
Public drunkenness	9	6	---	3	---	---	---	---	---	6	---	---
Rape	1	1	---	---	---	---	1	---	---	---	---	---
Receiving stolen property	1	1	---	---	---	---	---	---	1	---	---	---
Seduction	3	---	1	2	---	---	---	---	---	---	---	---
Selling mortgaged prop'e'y	2	1	---	1	---	---	---	---	---	1	---	---
Shoot. across public road	2	2	---	---	---	---	---	---	---	2	---	---
Shoot. into passen'r train	1	---	---	1	---	---	---	---	---	---	---	---
Shooting on Sunday	5	5	---	---	---	---	---	---	---	5	---	---
Trading mortg. property	1	1	---	---	---	---	---	---	---	1	---	---
Trespass after warning	1	---	1	---	---	---	---	---	---	---	---	---
Violating game law	1	---	---	1	---	---	---	---	---	---	---	---
Violating prohibition law	30	9	1	20	---	---	---	1	---	8	---	---
Violating written contract	1	1	---	---	---	---	---	---	---	1	---	---
Total	190	106	21	63	---	---	34	10	2	50	---	---

Percentage of convictions in cases disposed of, 56.

Predominant crime, Violating prohibition law.

NINTH JUDICIAL CIRCUIT.

Composed of the Counties of Cherokee, DeKalb, Jackson and Marshall.
Hon. R. C. Hunt, Solicitor, Fort Payne, Ala.

CHARACTER OF OFFENSE.	No. cases disposed of	Convictions	Acquittals	Nolle prosequies	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Abusive language -----	29	13	2	11	3					13		
Adultery and fornication -----	9	2	2	5						2		
Affray -----	3	3								3		
Allowing minor to play pool -----	2			2								
Assault -----	18	9	4	4	1					9		
Assault and battery -----	12	6		6						6		
Assault and battery with weapon -----	8	7	1							7		
Assault, intent to murder -----	4		1	3								
Bastardy -----	2	2								2		
Betting with minor -----	7	1	1	5						1		
Burglary -----	3	2		1			2					
Carnal knowledge, girl over ten -----	1				1							
Concealed weapons -----	26	11	4	7	4			1		9		
Cruelty to animals -----	1		1									
Defacing public bldgs. -----	1	1								1		
Defamation -----	3	2	1							2		
Defaulting road hand -----	7	2	4	1						2		
Disturbing pub. worship -----	25	13	3	9						12		
Disturbing females -----	2		1	1								
Disturbing public assem- bly -----	10	4	1	5						3		
Failing to repair public road -----	3		2	1								

NINTH JUDICIAL CIRCUIT—Continued.

CHARACTER OF OFFENSE.	No. cases disposed of	Convictions	Acquittals	Nolle prosequies	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Violating fish law-----	2	1	---	1	---	---	---	---	---	1	---	---
Violating prohibition law	55	10	12	33	---	---	---	3	---	7	---	---
Violating Sunday law-----	1	---	---	1	---	---	---	---	---	---	---	---
Violating stock law-----	1	---	1	---	---	---	---	---	---	---	---	---
Total-----	356	134	57	152	13	---	---	8	---	119	---	---

Percentage of convictions in cases disposed of, 38.

Predominant crime, Violating Prohibition Law.

ATTORNEY GENERAL.

CXXV

TENTH JUDICIAL CIRCUIT.

Composed of the County of Jefferson.

Hon. Jno. McQueen, Solicitor, Birmingham, Ala.

No reports obtainable.

ELEVENTH JUDICIAL CIRCUIT.

Composed of the Counties of Colbert, Franklin, Lauderdale and Marion.

Hon. R. T. Simpson, Jr., Solicitor, Florence, Ala.

CHARACTER OF OFFENSE.	No. cases disposed of	Convictions	Acquittals	Nolle proseques	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Abusive language -----	65	37	4	24	---	---	---	---	---	37	---	---
Adultery and fornication	18	5	2	11	---	---	---	2	---	4	---	---
Allow. minor to play pool	2	---	---	2	---	---	---	---	---	---	---	---
Aiding escape -----	2	---	---	2	---	---	---	---	---	---	---	---
Assault -----	11	6	1	4	---	---	---	2	---	4	---	---
Assault and battery ----	8	6	---	2	---	---	---	---	---	6	---	---
Assault and battery with weapon -----	34	21	1	12	---	---	---	3	---	17	---	---
Assault, intent to murder	16	8	1	7	---	---	5	3	---	---	---	---
Assault, intent to ravish	3	3	---	---	---	---	3	---	---	---	---	---
Betting at cards -----	2	2	---	---	---	---	---	1	---	1	---	---
Bastardy -----	2	1	1	---	---	---	---	---	---	1	---	---
Burglary -----	26	18	2	6	---	---	15	3	---	2	---	---
Concealed weapons -----	52	25	4	22	1	---	---	5	---	16	---	---
Cruelty to animals -----	4	---	1	2	1	---	---	---	---	---	---	---
Disturbing relig's worship	19	10	1	8	---	---	---	---	---	8	---	---
Dispos'g of mortg. prop'ty	5	4	---	1	---	---	1	---	---	3	---	---

ELEVENTH JUDICIAL CIRCUIT—Continued.

CHARACTER OF OFFENSE.	No. cases disposed of	Convictions	Acquittals	Nolle prosequies	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Disturbing females -----	2	1	---	1	---	---	---	---	---	1	---	---
Disturbing pub. assembly -----	2	---	---	2	---	---	---	---	---	---	---	---
Embezzlement -----	9	1	---	8	---	---	1	---	---	---	---	---
Enticing labor -----	1	---	---	1	---	---	---	---	---	---	---	---
Fail. to repair pub. road -----	1	1	---	---	---	---	---	---	---	1	---	---
False pretense -----	1	---	---	1	---	---	---	---	---	---	---	---
Forgery, first degree -----	3	1	---	2	---	---	1	---	---	---	---	---
Forgery, second degree -----	1	1	---	---	---	---	1	---	---	---	---	---
Gaming -----	30	11	---	18	1	---	---	1	---	9	---	---
Gaming on Sunday -----	2	1	---	1	---	---	---	---	---	1	---	---
Horse racing -----	4	1	2	1	---	---	---	---	---	1	---	---
Incest -----	4	3	1	---	---	---	3	---	---	---	---	---
Keeping gaming table -----	1	---	---	1	---	---	---	---	---	---	---	---
Larceny, grand -----	22	8	6	7	1	---	5	3	---	---	---	---
Larceny, petit -----	17	7	3	7	---	---	---	3	1	4	---	---
Malicious mischief -----	2	---	1	1	---	---	---	---	---	---	---	---
Manufacturing whiskey -----	4	2	---	2	---	---	---	---	---	2	---	---
Manslaughter, first degree -----	8	7	---	1	---	---	7	---	---	---	---	---
Malic's injury to prop'y -----	1	---	---	1	---	---	---	---	---	---	---	---
Murder, first degree -----	9	4	5	---	---	1	3	---	---	---	---	---
Murder, second degree -----	6	5	1	---	---	---	5	---	---	---	---	---
Obtaining money under false pretense -----	2	---	---	2	---	---	---	---	---	---	---	---
Perm'g st'k to run at large -----	1	1	---	---	---	---	---	---	---	1	---	---
Practi'g medicine without a license -----	4	---	---	4	---	---	---	---	---	---	---	---
Presenting gun -----	2	1	---	1	---	---	---	1	---	---	---	---
Public drunkenness -----	118	58	1	58	1	---	---	1	---	54	---	---
Reckless driving -----	1	1	---	---	---	---	---	---	---	1	---	---

ELEVENTH JUDICIAL CIRCUIT—Continued.

CHARACTER OF OFFENSE.	No. cases disposed of	Convictions	Acquittals	Nolle proseques	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned .
						Death	Penitentiary	Hard Labor	Jail			
Resisting officer -----	3	1	---	2	---	---	---	1	---	---	---	---
Robbery -----	5	4	---	1	---	---	4	---	---	---	---	---
Sell'g cigarettes to minor	14	5	---	9	---	---	---	---	---	5	---	---
Selling mortg'd property	3	1	---	2	---	---	---	1	---	1	---	---
Shooting on Sunday -----	4	2	1	1	---	---	---	---	---	2	---	---
Sodomy -----	1	1	---	---	---	---	1	---	---	---	---	---
Trespass after warning--	4	1	2	1	---	---	---	---	---	1	---	---
Unlawful injury to animal	4	3	1	---	---	---	---	---	---	3	---	---
Unlawfully killing fish---	1	1	---	---	---	---	---	---	---	1	---	---
Unlawfully taking mule---	1	---	---	1	---	---	---	---	---	---	---	---
Vagrancy -----	8	2	---	6	---	---	---	1	---	1	---	---
Violating prohibition law	119	51	17	51	---	---	---	21	---	44	---	---
Violating revenue law----	15	3	1	11	---	---	---	---	---	3	---	---
Violating Sunday law----	5	3	---	2	---	---	---	---	---	3	---	---
Total-----	714	339	60	310	5	1	55	52	1	239	---	---

Percentage of convictions in case disposed of, 46.

Predominant crime, Violating prohibition law.

TWELFTH JUDICIAL CIRCUIT.

Composed of the Counties of Coffee, Covington, Geneva, Houston and Pike.
Hon. R. H. Parks, Solicitor, Troy, Ala.

CHARACTER OF OFFENSE.	No. cases disposed of	Convictions	Acquittals	Nolle proseques	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Abusive language -----	8	7		1						7		
Adultery and fornication -----	3	3								3		
Aiding escape -----	2	2					1			1		
Arson, second degree -----	4	2	1	1				2				
Assault and battery -----	43	38		3	2			4		34		
Assault, intent to murder -----	27	20		6	1		11	9				
Assault, intent to ravish -----	1	1					1					
Bastardy -----	2	2								2		
Bigamy -----	1	1					1					
Burglary -----	12	9	2	1			2	7				
Carnal knowledge, girl under ten -----	3	2		1			2					
Concealed weapons -----	9	8	1					2	6			
Crime against nature -----	1	1					1					
Dispos'g of mortg'd prop. -----	4	2		2			1			1		
Embezzlement -----	2			2								
False pretense -----	19	8	3	7	1			2		6		
Forgery, first degree -----	3	1		1	1		1					
Forgery, second degree -----	2	2					2					
Gaming -----	8	7		1						7		
Injuring animals -----	1	1								1		
Incest -----	2	2					1	1				
Larceny, grand -----	31	23	1	7			6	17				
Larceny, petit -----	17	16		1				1		15		
Manslaughter, first degree -----	10	7	2	1			5	2				
Murder, first degree -----	13	8	1	4		1	7					

TWELFTH JUDICIAL CIRCUIT—Continued.

CHARACTER OF OFFENSE.	No. cases disposed of	Convictions	Acquittals	Nolle prosequies	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Murder, second degree---	14	13	---	1	---	---	13	---	---	---	---	---
Perjury -----	1	---	---	1	---	---	---	---	---	---	---	---
Playing cards on Sunday	6	5	---	1	---	---	---	---	---	5	---	---
Playing cards, pub. place	6	5	---	---	1	---	---	---	---	5	---	---
Presenting gun -----	2	1	---	---	1	---	---	---	---	1	---	---
Retailing -----	12	4	3	5	---	---	---	---	---	4	---	---
Selling mortg'd property--	2	---	---	2	---	---	---	---	---	---	---	---
Sodomy -----	1	---	1	---	---	---	---	---	---	---	---	---
Throwing missel at train	1	1	---	---	---	---	1	---	---	---	---	---
Vagrancy -----	4	2	---	2	---	---	---	---	2	---	---	---
Violating Sunday law----	2	1	---	1	---	---	---	---	---	1	---	---
Total -----	279	205	15	52	7	1	55	46	8	90	---	---

Percentage of convictions in cases disposed of, 76.

Predominant crime, Assault and battery.

THIRTEENTH JUDICIAL CIRCUIT.

Composed of the Counties of Baldwin, Mobile and Washington.

Hon. Jas. N. Granade, Solicitor, Chatom, Ala.

CHARACTER OF OFFENSE.	No. cases disposed of	Convictions	Acquittals	Nolle proseques	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Abusive language -----	7	5	2							5		
Adultery and fornication	4	1	1	2						1		
Arson -- -----	2		2									
Assault and battery -----	18	8	4	6						5		
Assault, intent to murder	6	3	2	1			3					
Burglary -----	6	5	1				4			1		
Concealed weapons -----	6	4	1	1						4		
Decoying child -----	1	1								1		
Defamation -----	1			1								
Embezzlement -- -----	1				1							
Gaming -- -----	10		10									
Injuring animals -- -----	3	2	1							2		
Larceny, grand -----	9	8			1		7	2				
Larceny, petit -----	6	2	4					1	1			
Manslaughter, first degree	1	1					1					
Murder, first degree -----	3	3					3					
Murder, second degree --	1	1					1					
Perjury -- -----	1			1								
Trespass after warning --	1				1							
Unlawful entering office --	1		1									
Violating forestry law ---	1				1							
Violating prohibition law	3		1	1	1							
Violating revenue law ---	9	2	1	3	3					2		
Violating written contr'ct	1	1								1		
Total -----	102	47	31	16	8		19	3	1	22		

Percentage of convictions in cases disposed of, 46.

Predominate crime, Assault and battery.

FOURTEENTH JUDICIAL CIRCUIT.

Composed of the Counties of Walker and Winston.
Hon. W. C. Davis, Solicitor, Jasper, Ala.

CHARACTER OF OFFENSE.	No. cases disposed of	Convictions	Acquittals	Nolle proseques	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Adultery and fornication	2	2								2		
Assault and battery ----	10	4	3	3						4		
Assault, intent to murder	7	1	1	5						1		
Attempt to poison -----	17	5		12						5		
Betting with minor ----	2			2								
Burglary -- -----	8	5		3			5					
Concealed weapons ----	26	4	4	15	3					4		
Defaulting road hand ---	6	3		3						3		
Disturbing religious wor- ship -- -----	2	1		1						1		
Failing to discharge du- ty as overseer -----	1	1								1		
Forgery -- -----	2			2								
Forgery, third degree ---	1	1							1			
Gaming -- -----	7	4		3						4		
Injuring personal prop- erty -- -----	1	1								1		
Intimidating voter -----	1			1								
Larceny, grand -----	1	1					1					
Larceny, petit -----	3	3						2	1	1		
Malicious mischief -----	1	1								1		
Manslaughter, first de- gree -- -----	1	1					1					
Manslaughter, 2nd degree	1	1						1				
Murder -- -----	5	4			1		4					
Murder, 1st degree -----	5	4			1		4					

FOURTEENTH JUDICIAL CIRCUIT—Continued.

CHARACTER OF OFFENSE.	No. cases disposed of	Convictions	Acquittals	Nolle proseques	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Murder, 2nd degree-----	5	2	2	1			2					
Perjury --	1			1								
Practicing medicine with- out a license -----	5	2		3						2		
Presenting gun -----	3		1	2								
Public drunkenness -----	24	18		5	1					17		
Rape --	2			2								
Resisting officer -----	1	1								1		
Selling liquor to minor--	1			1								
Selling motgaged property	3	1		2						1		
Shooting across public road --	1		1									
Unlawful injury to ani- mal --	1			1								
Violating prohibition law	55	10	2	31	12			1		9		
Violating revenue law---	16	8		7	1				1	5		
Violating Sunday law----	2	1			1					1		
Total-----	224	86	14	105	19		13	4	3	64		

Percentage of convictions in cases disposed of, 37.

Predominant crime, Violating prohibition law.

FIFTEENTH JUDICIAL CIRCUIT.

Composed of the Counties of Autauga, Chilton and Elmore.

Hon. D. D. Askew, Solicitor, Wetumpka, Ala.

CHARACTER OF OFFENSE.	No. cases disposed of	Convictions	Acquittals	Nolle prosequies	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Adultery and fornication	10	6	---	4	---	---	---	3	---	3	---	---
Affray	1	---	1	---	---	---	---	---	---	---	---	---
Allowing minor to play pool	4	2	---	2	---	---	---	---	---	2	---	---
Arson, first degree	1	---	---	---	1	---	---	---	---	---	---	---
Arson, second degree	3	1	1	1	---	---	1	---	---	---	---	---
Assault and battery	23	14	4	4	1	---	---	4	2	8	---	---
Assault and battery with weapon	37	30	1	6	---	---	---	8	---	23	---	---
Assault, intent to murder	15	6	7	2	---	---	5	1	---	---	---	---
Assault, intent to ravish	2	---	---	1	1	---	---	---	---	---	---	---
A. I. O. L.	12	10	1	1	---	---	---	3	---	7	---	---
Attempt to poison	1	---	---	---	1	---	---	---	---	---	---	---
Betting at billiards with minor	1	---	---	1	---	---	---	---	---	---	---	---
Betting with minor	1	---	---	1	---	---	---	---	---	---	---	---
Bigamy	2	---	---	1	1	---	---	---	---	---	---	---
Breaking fence	1	---	---	1	---	---	---	---	---	---	---	---
Bastardy	3	2	---	---	1	---	---	1	---	1	---	---
Burglary	14	9	2	2	1	---	7	2	---	---	---	---
Burglary and grand lar- ceny	6	3	2	1	---	---	2	1	---	---	---	---
Carnal knowledge, girl under ten	1	1	---	---	---	---	1	---	---	---	---	---
Concealing weapons	24	14	4	4	2	---	---	9	---	5	---	---
Concealing stolen prop- erty	5	3	1	1	---	---	2	1	---	---	---	---
Cruelty to animals	4	3	---	1	---	---	---	1	---	2	---	---

FIFTEENTH JUDICIAL CIRCUIT—Continued.

CHARACTER OF OFFENSE.	No. cases disposed of	Convictions	Acquittals	Nolle proseques	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Defamation ..	1	---	---	1	---	---	---	---	---	---	---	---
Defaulting road hand....	1	---	---	1	---	---	---	---	---	---	---	---
Disturbing religious wor- ship ..	5	1	2	2	---	---	---	---	---	1	---	---
Disposing of property to H. D. or D.....	1	---	1	---	---	---	---	---	---	---	---	---
Disposing of property un- der lien ..	3	---	2	1	---	---	---	---	---	---	---	---
Disturbing school ..	2	1	---	1	---	---	---	---	---	1	---	---
Embezzlement ..	2	---	1	---	1	---	---	---	---	---	---	---
Escape ..	5	4	---	1	---	---	---	4	---	---	---	---
Enticing minor ..	1	1	---	---	---	---	---	---	---	1	---	---
Enticing labor ..	1	---	---	1	---	---	---	---	---	---	---	---
Failing to repair public road ..	1	---	1	---	---	---	---	---	---	---	---	---
False pretense ..	8	2	2	2	2	---	---	1	---	1	---	---
Forgery, first degree....	1	1	---	---	---	---	1	---	---	---	---	---
Forgery, second degree..	3	2	1	---	---	---	2	---	---	---	---	---
Gaming ..	2	---	1	1	---	---	---	---	---	---	---	---
Giving liquor to minor..	1	---	---	---	1	---	---	---	---	---	---	---
Kidnapping ..	1	---	---	1	---	---	---	---	---	---	---	---
Killing hogs unlawfully..	1	---	---	1	---	---	---	---	---	---	---	---
Larceny, grand ..	19	15	2	2	---	---	13	2	---	---	---	---
Larceny, petit ..	21	17	1	3	---	---	---	7	1	9	---	---
Manslaughter, first de- gree ..	2	2	---	---	---	---	1	1	---	---	---	---
Manslaughter, second de- gree ..	1	1	---	---	---	---	---	1	---	---	---	---
Miscegenation ..	5	---	1	3	1	---	---	---	---	---	---	---

FIFTEENTH JUDICIAL CIRCUIT—Continued.

CHARACTER OF OFFENSE.	No. cases disposed of	Convictions	Acquittals	Nolle proseques	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Murder, first degree-----	17	12	3	2	---	3	8	---	---	---	---	---
Murder, second degree----	8	7	---	1	---	---	7	---	---	---	---	---
Obstructing public road-----	1	---	---	1	---	---	---	---	---	---	---	---
Perjury -----	3	---	---	2	1	---	---	---	---	---	---	---
Peddling without license-----	1	---	---	1	---	---	---	---	---	---	---	---
Purloining examination papers -----	1	1	---	---	---	---	---	---	---	1	---	---
Presenting gun -----	1	---	---	1	---	---	---	---	---	---	---	---
Public drunkenness -----	7	3	1	3	---	---	---	1	---	2	---	---
Rape -----	2	1	1	---	---	---	1	---	---	---	---	---
Receiving stolen property-----	1	---	---	1	---	---	---	---	---	---	---	---
Resisting officer -----	4	2	1	---	1	---	---	1	---	1	---	---
Robbery -----	1	---	---	1	---	---	---	---	---	---	---	---
Seduction -----	1	1	---	---	---	---	1	---	---	---	---	---
Selling cigarettes to minor-----	1	---	1	---	---	---	---	---	---	---	---	---
Selling mortgaged prop- erty -----	8	1	2	5	---	---	---	1	---	---	---	---
Shooting across public road -----	2	---	1	---	1	---	---	---	---	---	---	---
Shooting into passenger train -----	1	---	1	---	---	---	---	---	---	---	---	---
Swapping horses without license -----	1	---	---	1	---	---	---	---	---	---	---	---
Trespass after warning-----	5	4	1	---	---	---	---	---	---	4	---	---
Trespassing on public property -----	1	1	---	---	---	---	---	---	---	1	---	---
Vagrancy -----	9	2	3	3	1	---	---	1	---	1	---	---
Violating convict contract-----	1	1	---	---	---	---	---	1	---	---	---	---
Violating court contract-----	3	3	---	---	---	---	---	---	---	3	---	---

FIFTEENTH JUDICIAL CIRCUIT—Continued.

CHARACTER OF OFFENSE.	No. cases disposed of	Convictions	Acquittals	Nolle prosequies	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Violating game law----	5	3	1	1	---	---	---	---	---	3	---	---
Violating prohibition law	102	34	19	43	6	---	---	16	---	18	---	---
Violating Sunday law --	2	---	---	2	---	---	---	---	---	---	---	---
Violating written contract	7	4	1	2	---	---	---	2	---	2	---	---
Total-----	455	231	75	125	24	3	52	73	1	100	---	---

Percentage of convictions in cases disposed of, 50.

Predominant crime, Violating prohibition law.

SIXTEENTH JUDICIAL CIRCUIT.

Composed of the Counties of Blount, Etowah and St. Clair.

Hon. Jas. A. Embry, Solicitor, Ashland, Ala.

CHARACTER OF OFFENSE.	No. cases disposed of	Convictions	Acquittals	Nolle prosequies	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Abandonment -----	2	---	---	1	1	---	---	---	---	---	---	---
Abusive language -----	45	31	3	10	1	---	---	---	---	31	---	---
Adultery and fornication -----	4	2	1	1	---	---	---	1	---	1	---	---
Affray -----	5	3	---	2	---	---	---	---	---	3	---	---
Arson, second degree -----	1	1	---	---	---	---	1	---	---	---	---	---
Assault -----	1	---	---	---	1	---	---	---	---	---	---	---
Assault and battery -----	34	25	4	3	2	---	---	1	---	22	---	---
Assault and battery with weapon -----	12	7	---	5	---	---	---	---	---	7	---	---
Assault, intent to murder -----	12	3	1	8	---	---	2	1	---	1	---	---
Assault, intent to ravish -----	1	---	---	1	---	---	---	---	---	---	---	---
Blackmail -----	1	---	---	1	---	---	---	---	---	---	---	---
Burglary -----	4	3	---	1	---	---	1	1	---	---	---	---
Burglary and grand larceny -----	8	3	---	1	4	---	2	1	---	---	---	---
Burglary in railroad car -----	1	1	---	---	---	---	---	---	---	1	---	---
Carnal knowledge, girl under 12 -----	1	1	---	---	---	---	1	---	---	3	---	---
Carrying pistol under 24 inches in length -----	6	3	---	3	---	---	---	---	---	3	---	---
Concealed weapons -----	19	6	4	9	---	---	---	1	---	5	---	---
Cutting timber from land of another -----	1	1	---	---	---	---	---	---	---	1	---	---
Cruelty to animals -----	3	1	2	---	---	---	---	---	---	1	---	---
Defamation -----	1	1	---	---	---	---	---	---	---	1	---	---
Defaulting road hand -----	11	3	2	5	1	---	---	---	---	3	---	---

SIXTEENTH JUDICIAL CIRCUIT—Continued.

CHARACTER OF OFFENSE.	No. cases disposed of	Convictions	Acquittals	Nolle proseques	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Disturbing religious wor- ship -----	5	3	1		1					3		
Disturbing females -----	2			2								
Disturbing public assem- bly -----	2	2								2		
Dynamiting stream -----	1	1								1		
Embezzlement -----	2			2								
False pretense -----	1				1							
Forgery, first degree -----	2	2					2					
Forgery, third degree -----	1	1							1			
Gaming -----	10	1	1	8						1		
Gaming on Sunday -----	10	7	1	1	1					7		
Hauling without license -----	19	5	1	13						5		
Injuring animals -----	2		1	1								
Injuring property -----	2	1		1						1		
Incest -----	2		1	1								
Killing fish -----	2	2								2		
Killing dogs -----	2			1	1							
Larceny, grand -----	6	3	1	1	1		3					
Larceny, petit -----	9	6	1	2				3	1	3		
Manslaughter, first degree -----	4			4								
Manslaughter, 2nd degree -----	1	1					1					
Obstructing public road -----	2			1	1							
Obtaining money under false pretense -----	1			1								
Ordering liquors -----	1			1								
Perjury -----	3			3								
Presenting gun -----	6	2		4						2		
Public drunkenness -----	22	17	1	4				1		16		

SIXTEENTH JUDICIAL CIRCUIT—Continued.

CHARACTER OF OFFENSE.	No. cases disposed of	Convictions	Acquittals	Nolle proseques	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Seduction	2	1			1		1					
Selling mortgaged prop'y	4		1	3								
Shooting across pub. road	3	2		1						2		
Stock running at large	1		1									
Trespass after warning	3	2		1						2		
Unlawful injury to animal	1				1							
Violating game law	5	3	1	1						3		
Violating prohibition law	52	25	12	14	1			8	2	17		
Violating revenue law	1			1								
Violating stock law	4	1	1	2						1		
Total	369	183	42	125	19		14	18	3	148		

Percentage of convictions in cases disposed of, 49.

Predominant crime, Violating Prohibition Law.

CITY COURT OF ANDALUSIA.

Hon. L. H. Brassell, Solicitor, Florala, Ala.

[illegible]

CITY COURT OF ANDALUSIA—Continued.

CHARACTER OF OFFENSE.	No. cases disposed of	Convictions	Acquittals	Nolle proseques	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Injuring public road.....	2	---	1	1	---	---	---	---	---	---	---	---
Justice of Peace, neglect of duty	1	1	---	---	---	---	---	---	---	1	---	---
Keeping open on Sunday..	2	1	---	1	---	---	---	---	---	1	---	---
Keep'g sheep-killing dog..	1	1	---	---	---	---	---	---	---	1	---	---
Larceny, petit	14	7	3	3	1	---	---	2	---	5	---	---
Malicious mischief	8	3	2	2	1	---	---	1	---	2	---	---
Obstructing public road...	12	2	2	8	---	---	---	---	---	2	---	---
Pistol in possession off premises	2	2	---	---	---	---	---	2	---	2	---	---
Presenting gun	7	1	---	6	---	---	---	---	---	1	---	---
Public drunkenness	12	4	2	4	2	---	---	---	---	4	---	---
Running pool table with- out license	1	---	---	---	1	---	---	---	---	---	---	---
Remov'g prop'y under lien	1	---	---	1	---	---	---	---	---	---	---	---
Resisting officer	2	---	1	1	---	---	---	---	---	---	---	---
Retailing	35	8	7	17	3	---	---	2	---	8	---	---
Selling diseased meat ...	1	---	1	---	---	---	---	---	---	---	---	---
Selling liquor on Sunday	2	1	---	1	---	---	---	---	---	1	---	---
Selling liquor to minor...	1	---	1	---	---	---	---	---	---	---	---	---
Selling mortg'd property..	8	1	3	4	---	---	---	---	---	1	---	---
Selling live stock without license	1	---	---	---	1	---	---	---	---	---	---	---
Selling game	1	1	---	---	---	---	---	---	---	1	---	---
Shooting into dwelling...	6	---	2	4	---	---	---	---	---	---	---	---
Temporary use of animal	1	---	---	---	1	---	---	---	---	---	---	---
Trespass after warning...	29	2	2	25	---	---	---	1	---	2	---	---
Unlawfully procu'g liquor	5	1	---	4	---	---	---	---	---	1	---	---
Vagrancy	11	3	3	4	1	---	---	1	---	2	---	---

CITY COURT OF ANDALUSIA—Continued.

CHARACTER OF OFFENSE.	No. cases disposed of	Convictions	Acquittals	Nolle proseques	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Violating automobile law	1	---	---	---	1	---	---	---	---	---	---	---
Violating convict contract	2	2	---	---	---	---	---	2	---	---	---	---
Violating fish law -----	3	1	1	1	---	---	---	---	---	1	---	---
Violating game law -----	13	3	1	6	3	---	---	---	---	3	---	---
Violating prohibition law	11	6	1	4	---	---	---	1	---	5	---	---
Violating revenue law---	2	---	1	---	1	---	---	---	---	---	---	---
Violating written contract	13	6	4	3	---	---	---	6	---	---	---	---
Total-----	481	175	75	202	29	---	---	41	---	143	---	---

Percentage of convictions in cases disposed of, 36.

Predominant crime, Assault and Battery.

ATTORNEY GENERAL.

CXLIII

CITY COURT OF ANNISTON,

Hon. W. C. Tunstall, Jr., Solicitor, Anniston, Ala.

CHARACTER OF OFFENSE.	No. cases disposed of	Convictions	Acquittals	Nolle proseques	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Abusive language -----	4	2		2						2		
Adultery and fornication -----	2	1	1							1		
Assault and battery -----	6	5	1					1		4		
Assault and battery with weapon -----	11	6	3	2				1		5		
Assault, intent to murder -----	7	6	1				6					
Bastardy -----	2	1		1						1		
Bigamy -----	2	2					2					
Burglary -----	2	2					2					
Burglary and grand larceny Burgl'y, grand larceny & receiving stolen goods...	3	1		2			1					
Burglary in railroad car -----	11	10		1			10					
Burglary in railroad car -----	3	3					3					
Buying corn after sundo'n and before sunrise -----	1	1								1		
Carrying pistol under 24 inches in length -----	2	1		1						1		
Concealed weapons -----	6	4		2				1		3		
Defacing public buildings -----	1		1									
Disturb'g religious wors'p -----	2	2						1		1		
Embezzlement -----	1		1									
Forgery, first degree -----	3	3					3					
Gaming -----	3		1	2								
Gaming on Sunday -----	1	1								1		
Incest -----	1	1					1					
Killing dog -----	1		1									
Larceny, grand -----	3	3					3					

CITY COURT OF ANNISTON—Continued.

CHARACTER OF OFFENSE.	No. cases disposed of	Convictions	Acquittals	Nolle proseques	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Larceny, petit -----	5	5	---	---	---	---	---	2	---	3	---	---
Larceny G. & R. S. G.	15	11	---	4	---	---	11	---	---	---	---	---
Manslaughter, first degree ----	2	1	1	---	---	---	---	1	---	---	---	---
Murder, first degree ----	4	3	1	---	---	2	1	---	---	---	---	---
Murder, second degree ----	7	7	---	---	---	---	7	---	---	---	---	---
Obtaining money under false pretense -----	2	1	1	---	---	---	1	---	---	---	---	---
Perjury -----	3	---	2	1	---	---	---	---	---	---	---	---
Playing cards on Sunday	3	3	---	---	---	---	---	---	---	3	---	---
Play'g cards, public place	3	1	1	1	---	---	---	---	---	1	---	---
Practicing dentistry with- out a license -----	1	---	1	---	---	---	---	---	---	---	---	---
Public drunkenness ----	1	1	---	---	---	---	---	---	---	1	---	---
Receiving stolen property	2	1	---	1	---	---	---	---	---	1	---	---
Resisting officer -----	1	---	---	1	---	---	---	---	---	---	---	---
Robbery -----	2	2	---	---	---	---	2	---	---	---	---	---
Seduction -----	1	---	---	1	---	---	---	---	---	---	---	---
Seining creek -----	2	---	1	1	---	---	---	---	---	---	---	---
Selling cocaine -----	1	---	1	---	---	---	---	---	---	---	---	---
Selling mortgaged prop'ty	2	---	1	1	---	---	---	---	---	---	---	---
Shoot'g into passen. train	1	1	---	---	---	---	1	---	---	---	---	---
Sodomy -----	1	---	1	---	---	---	---	---	---	---	---	---
Violating prohibition law	40	25	7	8	---	---	---	20	---	5	---	---
Total -----	177	117	28	42	---	2	54	27	---	34	---	---

Percentage of convictions in cases disposed of, 66.

Predominant crime, Violating prohibition law.

CITY COURT OF BESSEMER.

Hon. Ben G. Perry, Solicitor, Bessemer, Ala.

CHARACTER OF OFFENSE.	No. cases disposed of	Convictions	Acquittals	Nolle prosequies	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Abusive language -----	113	58	41	7	7	---	---	1	1	56	---	---
Adultery and fornication-----	4	---	2	2	---	---	---	---	---	---	---	---
Affray -----	2	---	2	---	---	---	---	---	---	---	---	---
Assault and battery-----	44	17	22	3	2	---	---	1	1	15	---	---
Assault and battery with weapon -----	82	28	27	9	18	---	---	1	---	27	---	---
Assault, intent to murder	9	2	6	1	---	---	---	2	---	---	---	---
Bastardy -- -----	4	1	1	---	2	---	---	---	---	1	---	---
Burglary & grand larceny	1	---	1	---	---	---	---	---	---	---	---	---
Changing name with in- tent to defraud-----	2	---	2	---	---	---	---	---	---	---	---	---
Concealed weapons -----	23	10	11	2	---	---	---	2	---	8	---	---
Cruelty to animals -----	3	---	1	---	2	---	---	---	---	---	---	---
Defamation -----	4	---	2	2	---	---	---	---	---	---	---	---
Disturbing relig's worship	15	2	12	1	---	---	---	---	---	2	---	---
Embezzlement -----	4	2	2	---	---	---	---	1	---	1	---	---
False pretense -----	7	1	5	1	---	---	---	---	---	1	---	---
Gaming -----	21	14	6	---	1	---	---	---	---	14	---	---
Interfering with officer-----	1	---	1	---	---	---	---	---	---	---	---	---
Hav'g pistol under 24 ins.	1	1	---	---	---	---	---	---	---	1	---	---
Intimidation -----	3	---	---	---	3	---	---	---	---	---	---	---
Horseracing on pub. road	1	---	1	---	---	---	---	---	---	---	---	---
Illegal voting -----	1	---	1	---	---	---	---	---	---	---	---	---
Larceny, grand -----	10	1	8	---	1	---	---	1	---	---	---	---
Larceny, petit -----	7	4	3	---	---	---	---	---	---	4	---	---
Manslaughter, sec. degree	1	1	---	---	---	---	---	---	1	---	---	---
Murder, first degree-----	3	---	2	1	---	---	---	---	---	---	---	---

CITY COURT OF BESSEMER—Continued.

CHARACTER OF OFFENSE.	No. cases disposed of	Convictions	Acquittals	Nolle proseques	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Murder, second degree----	2	1	1	---	---	---	---	1	---	---	---	---
Obtain. board fraudulenty	3	1	1	---	1	---	---	---	---	1	---	---
Peace proceedings -----	5	1	3	1	---	---	---	---	---	1	---	---
Perjury -----	3	---	2	1	---	---	---	---	---	---	---	---
Poisoning animal -----	1	---	1	---	---	---	---	---	---	---	---	---
Presenting gun -----	7	1	3	3	---	---	---	---	---	1	---	---
Public drunkenness -----	4	---	2	---	2	---	---	---	---	---	---	---
Receiving stolen property	3	---	3	---	---	---	---	---	---	---	---	---
Resisting officer -----	1	---	1	---	---	---	---	---	---	---	---	---
Seling cigarettes to minor	2	1	---	1	---	---	---	---	---	1	---	---
Shooting across pub. road	2	---	1	---	1	---	---	---	---	---	---	---
Temporay use of animal	1	---	1	---	---	---	---	---	---	---	---	---
Trespass after warning--	17	---	8	8	1	---	---	---	---	---	---	---
Unlaw. injury to animal	12	3	8	1	---	---	---	---	---	3	---	---
Vagrancy -----	18	11	4	1	2	---	---	1	---	10	---	---
Violating prohibition law	161	77	31	37	16	---	---	5	---	72	---	---
Violating revenue law----	41	---	17	4	20	---	---	---	---	---	---	---
Violating Sunday law----	5	4	1	---	---	---	---	---	---	4	---	---
Total-----	654	242	247	86	79	---	---	16	3	223	---	---

Percentage of convictions in cases disposed of, 37.

Predominant crime, Violating prohibition law.

CXLVII

Hon. Q. W. Tucker, Solicitor, Grove Hill, Ala.

CHARACTER OF OFFENSE.	No. cases disposed of	Convictions	Acquittals	Nolle prosequies	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Abusive letter -----	1	1	---	---	---	---	---	---	---	1	---	---
Abusive language -----	16	11	3	2	---	---	---	---	---	11	---	---
Adultery and fornication -----	5	---	1	3	1	---	---	---	---	---	---	---
Assault, Aiding -----	1	---	---	1	---	---	---	---	---	---	---	---
Assault and battery -----	21	13	2	6	---	---	---	3	---	11	---	---
Assault and battery with weapon -----	20	8	5	6	1	---	---	---	---	8	---	---
Carnal knowledge -----	1	---	---	---	1	---	---	---	---	---	---	---
Carrying pistol under 24 inches in length -----	3	1	---	---	2	---	---	---	---	1	---	---
Concealed weapons -----	16	9	4	2	1	---	---	4	---	6	---	---
Cruelty to animals -----	1	---	1	---	---	---	---	---	---	---	---	---
Defamation -----	3	1	1	---	1	---	---	---	---	1	---	---
Disturbing relig's worship -----	1	---	---	1	---	---	---	---	---	---	---	---
Embezzlement -----	1	---	---	1	---	---	---	---	---	---	---	---
Enticing labor -----	1	---	---	1	---	---	---	---	---	---	---	---
False pretense -----	6	5	---	1	---	---	---	1	---	5	---	---
Forfeiture -----	4	4	---	---	---	---	---	---	---	4	---	---
Gaming -----	26	9	---	17	---	---	---	---	---	9	---	---
Larceny, petit -----	46	32	2	7	5	---	---	---	---	32	---	---
Obstructing public stream -----	1	---	---	1	---	---	---	---	---	---	---	---
Obstructing public road -----	1	---	---	1	---	---	---	---	---	---	---	---
Presenting gun -----	1	1	---	---	---	---	---	---	---	1	---	---
Public drunkenness -----	21	9	3	9	---	---	---	---	---	9	---	---
Resisting officer -----	2	1	1	---	---	---	---	---	---	1	---	---
Seling rent cotton -----	1	1	---	---	---	---	---	---	---	1	---	---
Selling mortg'd property -----	2	2	---	---	---	---	---	---	---	2	---	---

COUNTY COURT OF CLARKE COUNTY—Continued.

CHARACTER OF OFFENSE.	No. cases disposed of	Convictions	Acquittals	Nolle prosequies	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Temporary use of animal	1	1	---	---	---	---	---	---	---	1	---	---
Trespass after warning--	9	2	4	3	---	---	---	---	---	2	---	---
Unlawful use of animal--	2	1	---	1	---	---	---	---	---	1	---	---
Unlaw. injury to animal	5	3	1	1	---	---	---	---	---	3	---	---
Unlawfully rid'g on train	2	2	---	---	---	---	---	1	---	1	---	---
Unlawfully kill'g animals	2	2	---	---	---	---	---	---	---	2	---	---
Vagrancy -----	2	---	---	2	---	---	---	---	---	---	---	---
Violating prohibition law	43	12	8	14	9	---	---	3	---	10	---	---
Violating revenue law----	1	1	---	---	---	---	---	---	---	1	---	---
Violating stock law-----	1	---	1	---	---	---	---	---	---	---	---	---
Violating written contract	8	8	---	---	---	---	---	4	---	6	---	---
Violating contract on com. fees -----	1	1	---	---	---	---	---	---	---	1	---	---
Total-----	270	133	45	80	21	---	---	16	---	131	---	---

Percentage of convictions in cases disposed of, 48.

Predominant crime, Petit larceny.

ATTORNEY GENERAL.

CXLIX

COUNTY COURT OF CLAY COUNTY.

Hon. R. G. Rowland, Solicitor, Ashland, Ala.

CHARACTER OF OFFENSE.	No. cases disposed of	Convictions	Acquittals	Nolle prosequies	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Abusive language -----	54	38	5	10	1					38		
Adultery and fornication -----	2		1	1								
Affray -----	4	4								4		
Assault -----	55	36	6	8	5					35		
Assault and battery -----	10	6		4						6		
Bastardy -----	1				1							
Burglary -----	3	2		1			2					
Concealed weapons -----	32	22	5	5				1		22		
Cruelty to animals -----	4	2	2							2		
Defamation -----	2	1	1							1		
Disturbing relig's worship -----	13	9	1	1	2					9		
Disturb'g public assembly -----	1	1								1		
Escape -----	4	3			1			3				
Fail'g to repair pub. road -----	2	2								2		
False pretense -----	8	4	3		1					4		
Gaming -----	4	3	1							3		
Incest -----	1				1							
Larceny, petit -----	16	10	3	3				1	1	8		
Malicious mischief -----	3	1		2						1		
Murder, first degree -----	1	1					1					
Murder, second degree -----	7	5	2				5					
Overseer, neglect of duty -----	2	1	1							1		
Presenting gun -----	1	1								1		
Public drunkenness -----	54	44	2	7	1					44		
Receiving stolen property -----	3	2			1				1	2		
Remov. prop. under lien -----	1		1									
Robbery -----	4	3		1			3					

COUNTY COURT OF CLAY COUNTY—Continued.

CHARACTER OF OFFENSE.	No. cases disposed of	Convictions	Acquittals	Nolle prosequies	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Seduction -----	3	---	1	1	1	---	---	---	---	---	---	---
Self'g mortg'd property--	1	---	---	---	1	---	---	---	---	---	---	---
Sending abusive letters--	1	---	---	1	---	---	---	---	---	---	---	---
Shooting on Sunday ----	2	1	---	1	---	---	---	---	---	1	---	---
Trespass after warning--	7	---	5	2	---	---	---	---	---	---	---	---
Unlawf'l injury to animal	1	1	---	---	---	---	---	---	---	1	---	---
Violat. contr't with surety	1	1	---	---	---	---	---	---	---	1	---	---
Violating election law---	1	1	---	---	---	---	---	---	---	1	---	---
Violating prohibition law	48	24	12	10	2	---	---	2	---	24	---	---
Violating Sunday law---	5	4	---	1	---	---	---	---	---	4	---	---
Violating written contract	3	1	2	---	---	---	---	1	---	---	---	---
Total-----	365	234	54	59	18	---	11	9	2	216	---	---

Percentage of convictions in cases disposed of, 64.

Predominant crime, Assaults.

ATTORNEY GENERAL.

CLI

CITY COURT OF GADSDEN.

Hon. W. J. Boykin, Solicitor, Gadsden, Alabama.

CHARACTER OF OFFENSE.	No. cases disposed of	Convictions	Acquittals	Nolle prosequies	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Abduction -----	2	2					2					
Abusive language -----	48	36	7	4	1			1		35		
Adultery and fornication -----	5	4	1					2		2		
Affray, -----	2	2								2		
Assault and battery -----	23	15	3	5	1					15		
Assault and battery with weapon -----	35	30	3	2				5		25		
Assault, intent to murder -----	16	11	1	4			11					
Bigamy -----	1	1					1					
Burglary -----	16	11	2	3			9	2				
Concealed weapons -----	32	26	3	3				6		20		
Conspiracy -----	6	6								6		
Decoying child -----	1	1								1		
Defamation -----	1			1								
Defaulting road overseer -----	1			1								
Disposing property under lien -----	2	2					2					
Disturbing females -----	3	3								3		
Distu'g religious worship -----	11	4	2	5						4		
Embezzlement -----	1			1								
Escape -----	1	1						1				
Escape convict -----	1			1								
False pretense -----	3	3						2		1		
Forgery, second degree -----	1	1					1					
Gaming -----	54	48		6						48		
Keeping pool table with- out license -----	1	1								1		
Larceny, grand -----	16	12	1	3			11	1				
Larceny, petit -----	24	23	1					18	7	10		

CITY COURT OF GADSDEN—Continued.

CHARACTER OF OFFENSE.	No. cases disposed of	Convictions	Acquittals	Nolle prosequies	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Malicious mischief -----	6	4	---	2	---	---	---	---	---	4	---	---
Manslaughter, first degree -----	2	2	---	---	---	---	2	---	---	---	---	---
Murder, first degree -----	8	5	2	1	---	1	4	---	---	---	1	---
Murder, second degree -----	3	3	---	---	---	---	3	---	---	---	---	---
Perjury -----	2	1	---	1	---	---	1	---	---	---	---	---
Permitting minor to play pool -----	3	3	---	---	---	---	---	---	---	3	---	---
Presenting gun -----	6	2	2	2	---	---	---	---	---	2	---	---
Public drunkenness -----	29	27	1	1	---	---	---	---	---	27	---	---
Rape -----	1	1	---	---	---	---	1	---	---	---	---	---
Receiving stolen property -----	3	---	2	1	---	---	---	---	---	---	---	---
Robbery -----	4	4	---	---	---	---	4	---	---	---	---	---
Seduction -----	1	---	1	---	---	---	---	---	---	---	---	---
Selling liquor to minor -----	1	1	---	---	---	---	---	---	---	1	---	---
Selling mort. property -----	2	1	---	1	---	---	---	---	---	1	---	---
Shooting across pub. road -----	4	2	1	1	---	---	---	---	---	2	---	---
Shooting on Sunday -----	1	---	1	---	---	---	---	---	---	---	---	---
Taking girl under 18 for prostitution -----	1	1	---	---	---	---	---	1	---	---	---	---
Temporary use of per- sonal property -----	1	1	---	---	---	---	---	---	---	1	---	---
Trespass after warning -----	1	1	---	---	---	---	---	---	---	1	---	---
Severing from freehold -----	4	2	---	1	---	---	---	---	---	2	---	---
Unlawfully riding on train -----	60	60	---	---	---	---	---	60	---	---	---	---
Vagrancy -----	18	15	1	2	---	---	---	9	---	6	---	---
Violating auto law -----	1	1	---	---	---	---	---	1	---	1	---	---
Violating prohibition law -----	70	42	7	21	---	---	---	38	---	4	---	---
Violating game law -----	3	3	---	---	---	---	---	---	---	3	---	---
Violating stock law -----	6	3	2	1	---	---	---	---	---	3	---	---
Total -----	548	428	43	75	2	1	52	146	7	235	---	---

Percentage of convictions in cases disposed of, 78.

Predominant crime, Violating Prohibition Laws.

CIRCUIT COURT OF JACKSON COUNTY.

Hon. John F. Proctor, Scottsboro, Ala., Solicitor by Special Act.

CHARACTER OF OFFENSE.	No. cases disposed of	Convictions	Acquittals	Nolle prosequies	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Abusive language -----	32	13	4	14	1					12		
Adultery and fornication -----	5	2		3						2		
Affray -----	2	2								2		
Arson, first degree -----	1	1					1					
Assault -----	3	1		1	1					1		
Assault and battery -----	7	6			1					3		
Assault and battery with weapon -----	20	17	1	2				2		15		
Assault, intent to murder -----	4	2			2		2					
Betting at cards -----	12	11	1							11		
Burglary -----	8	4	2	2			4					
Concealed weapons -----	37	17	7	11	2			2		13		
Cruelty to animals -----	1		1									
Defamation -----	2	1	1							1		
Defaulting bail -----	1			1								
Defaulting road hand -----	5	4		1						4		
Destroying fence -----	1	1								1		
Disturb. religious wors'ip. -----	23	14	3	6						14		
Disposing of property un- der lien -----	4	1	1	2						1		
Disturbing pub. assembly -----	3	3								3		
Embezzlement -----	1		1									
Failing to repair public road -----	1		1									
False pretense -----	1		1									
Failing to report death -----	1			1								
Forgery, first degree -----	2	1	1				1					
Gaming -----	24	11	1	12				2		9		
Gaming on Sunday -----	3	2	1							2		
Gaming with minor -----	8	7		1						7		

CIRCUIT COURT OF JACKSON COUNTY—Continued.

CHARACTER OF OFFENSE.	No. cases disposed of	Convictions	Acquittals	Nolle proseques	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Injuring telegraph wires	2	---	2	---	---	---	---	---	---	---	---	---
Incest	1	---	---	1	---	---	---	---	---	---	---	---
Killing dog unlawfully	1	---	---	1	---	---	---	---	---	---	---	---
Larceny, grand	13	7	1	5	---	---	6	1	---	---	---	---
Larceny, petit	13	10	---	3	---	---	---	2	3	6	---	---
Manslaughter, first degree	9	6	2	1	---	---	7	---	1	---	---	---
Murder, first degree	6	3	2	---	1	---	3	---	---	---	---	---
Murder, second degree	2	1	---	1	---	---	1	---	---	---	---	---
Perjury	4	---	---	4	---	---	---	---	---	---	---	---
Peddling	1	---	---	1	---	---	---	---	---	---	---	---
Presenting gun	3	1	1	---	1	---	---	1	---	---	---	---
Public drunkenness	27	20	---	6	1	---	---	---	---	20	---	---
Receiving stolen property	1	1	---	---	---	---	---	---	1	1	---	---
Retailing	19	10	3	6	---	---	---	1	---	9	---	---
Seduction	2	---	1	1	---	---	---	---	---	---	---	---
Selling liquor to minor	47	13	---	13	21	---	---	4	---	9	---	---
Soliciting insurance	1	1	---	---	---	---	---	1	---	---	---	---
Selling mort. property	2	---	1	1	---	---	---	---	---	---	---	---
Shooting across pub. road	4	3	1	---	---	---	---	---	---	3	---	---
Shooting into dwelling house	2	---	---	2	---	---	---	---	---	---	---	---
Temporary use of prop'ty	1	1	---	---	---	---	---	---	---	1	---	---
Trespass after warning	2	---	---	2	---	---	---	---	---	---	---	---
Trespassing on pub. prop.	1	---	1	---	---	---	---	---	---	---	---	---
Unlawful injury to animal	3	---	---	3	---	---	---	---	---	---	---	---
Vagrancy	5	1	1	3	---	---	---	1	---	---	---	---
Violating game law	4	1	1	2	---	---	---	---	---	1	---	---
Violating Sunday law	1	1	---	---	---	---	---	---	---	1	---	---
Violating stock law	1	---	---	1	---	---	---	---	---	---	---	---
Total	390	201	44	114	31	---	25	16	5	150	---	---

Percentage of convictions in cases disposed of, 52.

CRIMINAL COURT OF JEFFERSON COUNTY—Continued.

CHARACTER OF OFFENSE.	No. cases disposed of	Convictions	Acquittals	Nolle proseques	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Cruelty to animals-----	8	---	1	5	2	---	---	---	---	---	---	---
Decoying child -----	1	---	---	1	---	---	---	---	---	---	---	---
Defacing public build- ings -----	1	---	1	---	---	---	---	---	---	---	---	---
Defamation -----	30	2	6	13	9	---	---	2	---	---	---	---
Disturbing religious worship -----	1	1	---	---	---	---	---	---	---	1	---	---
Disposing of property under lien -----	9	---	2	6	1	---	---	---	---	---	---	---
Disturbing public as- sembly -----	4	4	---	---	---	---	---	---	---	4	---	---
Embezzlement -----	60	7	10	26	17	---	---	6	1	---	---	---
Escape -----	1	1	---	---	---	---	---	1	---	---	---	---
Failing to repair public road -----	17	---	17	---	---	---	---	---	---	---	---	---
False pretense -----	48	12	7	22	7	---	---	12	---	---	---	---
Forgery, first degree--	28	7	12	8	1	---	7	---	---	---	---	---
Gaming -----	932	541	113	220	58	---	---	181	17	343	---	---
Indecent exposure ----	1	---	---	1	---	---	---	---	---	---	---	---
Injuring private b'ild'g	1	---	1	---	---	---	---	---	---	---	---	---
Intimidation -----	62	---	1	61	---	---	---	---	---	---	---	---
Interfering with officer	2	---	---	2	---	---	---	---	---	---	---	---
Keeping gaming table--	16	---	10	3	3	---	---	---	---	---	---	---
Kidnapping -----	1	---	---	1	---	---	---	---	---	---	---	---
Keeping sheep - killing dog -----	1	1	---	---	---	---	---	---	---	1	---	---
Larceny, grand -----	306	157	28	75	46	---	43	110	3	1	---	---
Larceny, petit -----	196	49	53	81	13	---	---	36	8	5	---	---
Libel -----	12	---	1	8	3	---	---	---	---	---	---	---

CLVII

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CRIMINAL COURT OF JEFFERSON COUNTY—Continued.

CHARACTER OF OFFENSE.	No. cases disposed of	Convictions	Acquittals	Nolle proseques	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Using firearms public place	5			5								
Vagrancy	616	110	103	205	198			73	7	30		
Violating automo. law	34	14	1	18	1					14		
Violating game law	5	3	2							3		
Violating prohi. law	1072	189	156	305	422			90	16	86		
Violating revenue law	239	8	24	195	12					7		
Violating Sunday law	7	1	3	3						1		
Violating stock law	1			1								
Violat. written contract	1			1								
Violating insurance law	3			2	1							
Total	6263	1720	1059	2469	1012	5	146	771	99	705		

Predominant crime, Violating Prohibition Laws.

Percentage of convictions in cases disposed of, 27.

LAW AND EQUITY COURT OF MADISON COUNTY.

Hon. J. H. Pride, Solicitor, Huntsville, Ala.

CHARACTER OF OFFENSE.	No. cases disposed of	Convictions	Acquittals	Nolle prosequies	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Abusive language -----	30	12	1	17				5		7		
Adultery and fornication	16	3		13				2		1		
Affray -----	1			1								
Allowing minor to play pool -----	2	1		1						1		
Aiding escape -----	3			3								
Arson, first degree -----	2	1	1				1					
Assault -----	23	10		13				1		9		
Assault and battery -----	18	4	2	12				1		3		
Assault and battery with weapon -----	52	28	1	23				5		23		
Assault, intent to murder	17	3	2	11	1		1	2				
Assault, intent to ravish	9	4		5				3		1		
Beating way on train -----	10	9		1				5		4		
Bigamy -----	5	1		4				1				
Bastardy -----	3			3								
Burglary -----	24	18	1	5				18				
Carrying pistol under 24 inches in length -----	3			3								
Concealed weapons -----	44	21	2	21				5		16		
Concealing felon -----	1			1								
Crime against nature -----	1			1								
Cruelty to animals -----	3			3								
Defacing public buildings	8	5		3				4		1		
Defamation -----	4		1	3								
Doing business without license -----	4			4								

LAW AND EQUITY COURT OF MADISON COUNTY—Continued.

CHARACTER OF OFFENSE.	No. cases disposed of	Convictions	Acquittals	Nolle prosequies	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Disturbing religious wor- ship -----	4			4								
Disposing of property un- der lien -----	7	3		4						3		
Extortion -----	2			2								
Enticing minor -----	1			1								
Failing to repair public road -----	3		1	2								
False pretense -----	1	1					1					
Forgery, first degree -----	9	6		3			6					
Fugitive from justice -----	1			1								
Gaming -----	13	11		2						11		
Gaming on Sunday -----	6	2	1	3						2		
Horse-trading without li- cense -----	2			2								
Horse racing -----	1	1								1		
Hunting without license -----	1			1								
Indecent exposure of per- son -----	3			3								
Keeping open door on Sunday -----	1			1								
Kidnapping -----	1			1								
Larceny, grand -----	49	36	2	11			2	32		2		
Larceny, petit -----	20	13	1	6				6	1	6		
Larceny from the person -----	1	1						1				
Mayhem -----	1			1								
Malicious mischief -----	10		2	8								
Manslaughter, 1st degree -----	4	1		3				1				
Murder, first degree -----	3		1	1	1							

LAW AND EQUITY COURT OF MADISON COUNTY—Continued.

CHARACTER OF OFFENSE.	No. cases disposed of	Convictions	Acquittals	Nolle prosequies	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Obtaining money under false pretense -----	10	8	1	---	1	---	1	3	---	4	---	---
Perjury -----	8	---	---	8	---	---	---	---	---	---	---	---
Presenting gun -----	2	---	---	2	---	---	---	---	---	---	---	---
Public drunkenness -----	20	13	2	5	---	---	---	5	---	8	---	---
Reckless driving -----	2	1	1	---	---	---	---	1	---	---	---	---
Resisting officer -----	10	3	---	7	---	---	---	1	---	2	---	---
Robbery -----	5	---	---	5	---	---	---	---	---	---	---	---
Seduction -----	3	1	1	1	---	---	---	1	---	---	---	---
Soliciting orders for liquor -----	1	---	---	1	---	---	---	---	---	---	---	---
Selling liquor to minor -----	7	---	1	6	---	---	---	---	---	---	---	---
Selling cigarettes to minor -----	18	10	1	7	---	---	---	---	---	10	---	---
Selling mort. property -----	4	---	---	4	---	---	---	---	---	---	---	---
Shooting across pub. road -----	14	5	---	9	---	---	---	1	---	4	---	---
Slander -----	1	---	---	1	---	---	---	---	---	---	---	---
Temporary use of prop'ty -----	1	---	---	1	---	---	---	---	---	---	---	---
Trespass after warning -----	8	1	---	7	---	---	---	---	---	---	---	---
Vagrancy -----	13	3	---	10	---	---	---	2	---	1	---	---
Violating dispensary law -----	1	---	---	1	---	---	---	---	---	---	---	---
Violating game law -----	1	1	---	---	---	---	---	1	---	---	---	---
Violating prohibition law -----	73	31	2	40	---	---	---	19	---	12	---	---
Violating written contract -----	34	20	1	13	---	---	---	15	---	5	---	---
Total -----	663	292	29	339	3	---	12	141	1	137	---	---

Percentage of convictions in cases disposed of, 43.

Predominant crime, Violating Prohibition Law.

COUNTY COURT OF MARION COUNTY.

Hon. R. W. Quinn, Solicitor, Hamilton, Alabama.

CHARACTER OF OFFENSE.	No. cases disposed of	Convictions	Acquittals	Nolle proseques	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Abusive language -----	9	4		5						3		
Aiding escape -----	4	1	3							1		
Assault and battery -----	6	3		3						3		
Concealed weapons -----	2	2								2		
Cruelty to animals -----	1	1								1		
Disposing of mortgaged property -----	2				2							
False pretense -----	1			1								
Fortune telling without license -----	4	3		1						3		
Giving liquor to minor -----	1			1								
Kidnapping -----	1			1								
Larceny, petit -----	4	4						4		4		
Obtaining goods under false pretense -----	1			1								
Public drunkenness -----	11	3	2	6						3		
Shooting on Sunday -----	2	1		1						1		
Shooting into dwelling -----	1	1								1		
Trespass after warning -----	1		1									
Unlawful taking animal -----	1	1								1		
Unlawfully killing dog -----	1		1									
Vagrancy -----	1		1									
Violating prohibition law -----	5	2	1	2						2		
Violating revenue law -----	2	2						2		1		
Total -----	61	28	9	22	2			6		26		

Percentage of convictions in cases disposed of, 45.

Predominant crime, Public Drunkenness.

ATTORNEY GENERAL

CLXIII

CITY COURT OF MOBILE.

N. E. Stallworth, Solicitor, Mobile, Ala.

CHARACTER OF OFFENSE.	No. cases disposed of	Convictions	Acquittals	Nolle prosequies	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Abusive language -----	14	4	5	4	1				3	2		
Adultery and fornication	1			1								
Affray -----	6	2	1	1	2			1		1		
Assault -----	1	1						1				
Assault and battery -----	27	13	7	3	4			2	3	8		
Assault and battery with weapon -----	52	36	12	3	1			22	7	7		
Assault, intent to murder	9	7	1		1		7					
Assault, intent to ravish	2				2							
Assault, intent to rob	3	3					3					
Burglary -----	1	1						1				
Betting at cards -----	11	10		1						10		
Burglary -----	47	38	4	4	1		29	18				
Carnal knowledge, girl under 12 -----	2	1	1			1						
Carnal knowledge, girl over 12, under 14 -----	1			1								
Carrying pistol under 24 inches in length -----	1				1							
Concealed weapons -----	4	4						2		2		
Crime against nature -----	1	1					1					
Defamation -----	1			1								
Defaulting road hand -----	1		1									
Embezzlement -----	10	6	2	1	1			5	1			
False pretense -----	13	5	3	4	1		1	3	1			
Forgery, second degree -----	12	9	2	1			7	2				
Forgery, third degree -----	4	4							4			
Gaming -----	9	8		1				7		1		

CITY COURT OF MOBILE—Continued.

CHARACTER OF OFFENSE.	No. cases disposed of	Convictions	Acquittals	Nolle proseques	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Keeping gaming table	9		8	1								
Larceny, grand	74	45	20	7	2		12	33				
Larceny, petit	28	15	4	5	4			11	3	2		
Malicious mischief	3	2		1				1		1		
Manslaughter, 1st degree	6	6					3	3				
Manslaughter, 2nd degree	2	1	1					1				
Murder, first degree	12	5	6		1	1	4					
Murder, second degree	5	2	2	1			2					
Nuisance	1				1							
Official neglect	1		1									
Operating slot machine	4	4								4		
Public drunkenness	1				1							
Rape	1		1									
Receiving stolen property	8	4	4				1	3				
Resisting officer	5	2	1	2				2				
Robbery	8	7	1				7					
Seduction	1	1						1				
Shooting across pub. road	1	1									1	
Sodomy	2	1	1				1					
Tampering with meter	1	1						1				
Trespass after warning	2			2								
Trespassing on public property	3	2	1									
Vagrancy	16	4	1	6	5			3	1			
Violating harbor law	1				1							
Violating game law	5		1		4							
Violating prohibition law	118	7	22	86	3			1		6		
Total	551	263	114	137	37	2	69	124	23	47	1	

Percentage of convictions in cases disposed of, 48.

Predominant crime, Violating Prohibition Laws.

CLXV.

Hon. Phillip H. Stern, Solicitor.
Hon. Wm. L. Martin, Assistant Solicitor.

CHARACTER OF OFFENSE.	No. cases disposed of	Convictions	Acquittals	Nolle proseques	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Abusive language -----	1	---	---	---	1	---	---	---	---	---	---	---
Adultery and fornication -----	2	1	---	1	---	---	---	1	---	---	---	---
Affray -----	3	1	1	1	---	---	---	1	---	1	---	---
Arson, first degree -----	2	---	1	1	---	---	---	---	---	---	---	---
Arson, second degree -----	3	---	2	1	---	---	---	---	---	---	---	---
Assault and battery -----	51	41	6	4	---	---	---	24	---	17	---	---
Assault, intent to murder -----	29	10	8	8	3	---	10	---	---	---	---	---
Assault, intent to rob -----	2	2	---	---	---	---	2	---	---	---	---	---
Attempt to commit a fel- ony -----	2	2	---	---	---	---	---	2	---	---	---	---
Bastardy -----	4	1	1	2	---	---	---	1	---	---	---	---
Bribery -----	1	---	1	---	---	---	---	---	---	---	---	---
Burglary -----	64	45	6	10	3	---	45	---	---	---	---	---
Burglary and grand lar- ceny -----	10	6	3	1	---	---	6	---	---	---	---	---
Carnal knowledge, girl over ten -----	2	1	---	1	---	---	1	---	---	---	---	---
Carrying pistol under 24 inches in length -----	4	2	1	---	1	---	---	1	---	1	---	---
Changing name unlaw- fully -----	3	2	1	---	---	---	---	1	---	1	---	---
Concealed weapons -----	31	23	1	7	---	---	---	15	---	8	---	---
Cutting timber from land of another -----	4	4	---	---	---	---	---	---	---	4	---	---
Crime against nature -----	2	1	---	1	---	---	1	---	---	---	---	---
Destroying fence -----	2	1	1	---	---	---	---	---	---	1	---	---

CITY COURT OF MONTGOMERY—Continued.

CHARACTER OF OFFENSE.	No. cases disposed of	Convictions	Acquittals	Nolle proseques	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Rape -----	2	---	1	1	---	---	---	---	---	---	---	---
Receiving stolen property	5	1	---	4	---	---	---	---	---	1	---	---
Removing property under lien -----	34	9	8	17	---	---	1	1	---	7	---	---
Renting house of prosti- tution -----	2	---	---	2	---	---	---	---	---	---	---	---
Resisting officer -----	4	---	1	3	---	---	---	---	---	---	---	---
Robbery -----	9	6	2	---	1	---	6	---	---	---	---	---
Selling examination pa- pers -----	3	---	---	3	---	---	---	---	---	---	---	---
Shooting across pub. road	1	---	1	---	---	---	---	---	---	---	---	---
Throwing missile at train	2	2	---	---	---	---	2	---	---	---	---	---
Trespass after warning--	3	2	---	1	---	---	---	1	---	1	---	---
Unlawfully ridi'g on train	38	29	3	6	---	---	---	26	---	3	---	---
Vagrancy -----	18	6	4	7	1	---	---	1	---	5	---	---
Violating automobile law	3	---	---	2	1	---	---	---	---	---	---	---
Violating game law-----	8	3	2	2	1	---	---	---	---	3	---	---
Violating prohibition law	54	9	1	44	---	---	---	5	---	4	---	---
Violating revenue law---	5	1	1	2	1	---	---	---	---	1	---	---
Violating Sunday law---	8	2	2	4	---	---	---	---	---	2	---	---
Violating written contract	35	22	5	5	3	---	---	16	10	6	---	---
Violating quarantine ----	6	1	1	3	1	---	---	---	---	1	---	---
Total-----	769	398	114	218	39	---	186	122	---	90	---	---

Percentage of convictions in cases disposed of, 52.

Predominant crime, Grand Larceny.

CRIMINAL COURT OF PIKE COUNTY.

Hon. E. R. Brannen, Solicitor, Troy, Ala.

CHARACTER OF OFFENSE.	No. cases disposed of	Convictions	Acquittals	Nolle proseques	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Abusive language -----	25	15	2	8	---	---	---	3	---	12	---	---
Adultery and fornication -----	2	---	1	1	---	---	---	---	---	---	---	---
Affray -----	2	2	---	---	---	---	---	---	---	2	---	---
Assault and battery -----	26	17	2	7	---	---	---	5	---	12	---	---
Breaking fence -----	1	1	---	---	---	---	---	---	---	1	---	---
Concealed weapons -----	38	26	9	3	---	---	---	12	---	14	---	---
Disturbing religious wor- ship -----	4	2	2	---	---	---	---	1	---	1	---	---
Escaped convict -----	1	1	---	---	---	---	---	1	---	---	---	---
Extortion -----	1	1	---	---	---	---	---	---	---	1	---	---
Failing to repair public road -----	1	1	---	---	---	---	---	---	---	1	---	---
False pretense -----	30	20	2	8	---	---	---	9	---	11	---	---
Failure to obey writ of habeas corpus -----	2	2	---	---	---	---	---	2	---	---	---	---
Gaming on Sunday -----	26	19	2	5	---	---	---	1	---	18	---	---
Gaming in public place -----	1	1	---	---	---	---	---	---	---	1	---	---
Justice of peace, neglect of duty -----	1	1	---	---	---	---	---	---	---	1	---	---
Larceny, petit -----	14	9	4	1	---	---	---	2	---	7	---	---
Malicious mischief -----	1	1	---	---	---	---	---	---	---	1	---	---
Obstructing public road -----	1	1	---	---	---	---	---	---	---	1	---	---
Presenting gun -----	2	2	---	---	---	---	---	---	---	2	---	---
Public drunkenness -----	5	4	---	1	---	---	---	---	---	4	---	---
Selling mortgaged prop'y -----	9	3	2	4	---	---	---	2	---	1	---	---
Temporary use of animal -----	1	1	---	---	---	---	---	---	---	1	---	---
Trespass after warning -----	9	3	3	3	---	---	---	---	---	3	---	---

CRIMINAL COURT OF PIKE COUNTY—Continued.

CHARACTER OF OFFENSE.	No. cases disposed of	Convictions	Acquittals	Nolle proseques	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Vagrancy -----	4	2	1	---	---	---	---	2	---	1	---	---
Violating prohibition law	15	13	---	2	---	---	---	3	---	10	---	---
Violating revenue law---	1	1	---	---	---	---	---	---	---	1	---	---
Total -----	223	150	30	43	---	---	---	43	---	107	---	---

Percentage of convictions in cases disposed of, 67.

Predominant crime, Concealed Weapons.

CITY COURT OF SELMA.

J. F. Thompson, Solicitor, Centreville, Ala.
R. C. Mangum, Deputy Solicitor, Selma, Ala.

CHARACTER OF OFFENSE.	No. cases disposed of	Convictions	Acquittals	Nolle prosequies	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Assault and battery	3	3						1		2		
Assault and battery with weapon	10	10					2	4		4		
Assault, intent to murder	3	1	1	1			1					
Assault, intent to ravish	1	1					1					
Burglary	15	12	2	1			5	7				
Concealed weapons	18	14	2	2				8		6		
Embezzlement	1			1								
Forgery, first degree	1	1					1					
Forgery, second degree	3	3						3				
Larceny, grand	14	10		3	1			10				
Larceny, petit	6	4	1	1				3				
Manslaughter, 1st degree	3	3					3					
Murder, first degree	4	4					4					
Murder, second degree	2	1	1				1					
Perjury	2	2					2					
Presenting gun	1	1								1		
Receiv'g stolen property	1			1								
Selling mortg'd. property	3	1		2						1		
Violating game law	3	2		1						2		
Violating prohibition law	24	14	5	5				5		9		
Total	118	87	12	18	1		20	41		26		

Percentage of convictions in cases disposed of, 74.

Predominant crime, Violating Prohibition Laws.

COUNTY COURT OF SHELBY COUNTY.

Hon. Jno. J. Haynes, Solicitor, Columbiana, Ala.

(Created by Special Session of Legislature in August, 1909.)

CHARACTER OF OFFENSE.	No. cases disposed of	Convictions	Acquittals	Nolle proseques	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Abusive language -----	4	10	---	4	---	---	---	2	---	8	---	---
Adultery and fornication -----	1	---	---	1	---	---	---	---	---	---	---	---
Assault and battery -----	5	4	---	1	---	---	---	1	---	3	---	---
Assault and battery with weapon -----	7	7	---	---	---	---	---	1	---	6	---	---
Assault, intent to murder -----	3	1	---	1	1	---	1	---	---	1	---	---
Betting -----	1	1	---	---	---	---	---	1	---	---	---	---
Burglary and grand lar- ceny -----	1	1	---	---	---	---	1	---	---	---	---	---
Concealed weapons -----	8	6	---	1	1	---	---	---	---	6	---	---
Disturbing religious wor- ship -----	2	1	---	1	---	---	---	---	---	1	---	---
Disturbing females -----	2	2	---	---	---	---	---	---	---	2	---	---
False pretense -----	1	---	---	1	---	---	---	---	---	---	---	---
Gaming -----	2	2	---	---	---	---	---	---	---	2	---	---
Larceny, grand -----	2	1	---	1	---	---	1	---	---	---	---	---
Larceny, petit -----	14	7	4	3	---	---	---	---	---	7	---	---
Malicious mischief -----	2	---	2	---	---	---	---	---	---	---	---	---
Murder -----	9	---	---	9	---	---	---	---	---	---	---	---
Presenting gun -----	1	1	---	---	---	---	---	---	---	1	---	---
Public drunkenness -----	14	12	1	1	---	---	---	1	---	11	---	---
Robbery -----	1	1	---	---	---	---	1	---	---	---	---	---
Selling liquor to minor--	1	---	---	1	---	---	---	---	---	---	---	---
Trespass after warning--	1	1	---	---	---	---	---	---	---	1	---	---
Vagrancy -----	2	1	---	1	---	---	---	1	---	---	---	---
Violating prohibition law	19	9	1	9	---	---	---	4	---	5	---	---
Total -----	113	68	8	35	1	---	4	10	---	54	---	---

Percentage of convictions in cases disposed of, 607.

Predominant crime, Violating Prohibition Law.

COUNTY COURT OF SUMTER.

Hon. Jas. A. Mitchell, Solicitor, Livingston, Ala.

CHARACTER OF OFFENSE.	No. cases disposed of	Convictions	Acquittals	Nolle prosequies	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Abandonment -----	1	1								1		
Assault and battery ----	32	28	4					1		28		
Assault and battery with weapon -----	23	21	2					2		19		
Betting on election -----	9	8		1						8		
Concealed weapons -----	10	6	2	1	1			3		3		
Cruelty to animals -----	1	1								1		
Defaulting road hand -----	1		1									
Disturb'g religious worsh'p	6	5	1					1		4		
Embezzlement -----	2	2						2				
Enticing labor -----	1		1									
Gaming -----	4	2	1		1					2		
Injuring building -----	1		1									
Larceny, petit -----	17	6	11							6		
Malicious mischief -----	1		1									
Presenting gun -----	3	3								3		
Public drunkenness -----	1	1								1		
Removing property un- der lien -----	2	1	1							1		
Resisting officer -----	3	3								3		
Shooting into dwelling ----	1	1								1		
Temporary use of animal	2	2								2		
Trespass after warning ----	4	3	1							3		
Violating court contract ----	2	1		1				1				
Violating game law -----	2	1		1						1		
Violating prohibition law	32	15	1	10	6			5		10		

COUNTY COURT OF SUMTER—Continued.

CHARACTER OF OFFENSE.	No. cases disposed of	Convictions	Acquittals	Nolle proseques	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Violating revenue law----	6	4	2	---	---	---	---	---	---	4	---	---
Violating stock law-----	1	1	---	---	---	---	---	---	---	1	---	---
Violating written contract	1	---	1	---	---	---	---	---	---	---	---	---
Total-----	175	120	31	16	8	---	---	15	---	106	---	---

Percentage of convictions in cases disposed of, 68.

Predominant crime, Violating Prohibition Law and Assault and Battery.

CITY COURT OF TALLADEGA.

Hon. Marion H. Sims, Solicitor, Talladega, Ala.

CHARACTER OF OFFENSE.	No. cases disposed of	Convictions	Acquittals	Nolle prosequies	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Abusive language -----	24	17	2	4	1			2		15		
Adultery and fornication	12	9		3				4	2	3		
Assault and battery -----	14	10	1	2	1			1		9		
Assault and battery with weapon -----	91	72	5	17	3			16		56		
Assault, intent to murder	4	3	1				3					
Assault, intent to ravish	3	1		2			1					
Attempt to poison -----	1	1					1					
Bastardy -----	3	1	1		1					1		
Betting at cards -----	2	1		1			1					
Burglary -----	1		1									
Concealed weapons -----	31	19	3	9				7		12		
Disturbing females -----	1		1									
Disturbing religious wor- ship -----	8	3	2	3				1		2		
Embezzlement -----	1		1									L
Forgery, first degree -----	2	2					2					
Gaming -----	11	6	1	4				2		4		
Having pistol under 24 inches -----	7	1			6			1				
Larceny, grand -----	41	40	1				40					
Larceny, petit -----	44	37	2	5				18	19			
Malicious mischief -----	1	1								1		
Manslaughter, 1st degree	1	1					1					
Manslaughter, 2nd degree	1			1								
Murder, first degree -----	5	2	2		1		2					
Murder, second degree -----	7	7					7					
Obtaining money under false pretense -----	10	4	4	1	1			2	2			

CITY COURT OF TALLADEGA—Continued.

CHARACTER OF OFFENSE.	No. cases disposed of	Convictions	Acquittals	Nolle proseques	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Perjury -----	2	1		1			1					
Presenting gun -----	6	3	1	2						3		
Public drunkenness -----	35	27		8				1		26		
Rape -----	1			1								
Riding motorcycle unlaw- fully -----	1	1								1		
Resisting officer -----	2	2								2		
Robbery -----	3	3				1	2					
Seduction -----	2	1		1			1					
Selling mortgaged prop- erty -----	2	2						1		1		
Sending challenge for duel -----	1		1									
Shooting across pub. road	6	2		4				1		1		
Temporary use of animal	8	5	2	1						5		
Unlawfully breaking fence -----	1			1								
Unlawfully riding on train -----	1	1						1				
Vagrancy -----	15	7	3	5				2		5		
Violating game and fish law -----	5	1		3	1					1		
Violating prohibition law	52	27		18	7			17	2	8		
Violating revenue law---	4	2	1	1						2		
Violating Sunday law---	9	6	1	2						6		
Violati'g written contract	3	2	1					2				
Total -----	491	331	38	100	22	1	62	79	25	164		

Percentage of convictions in cases disposed of, 67.

Predominant crime, Assault and Battery with a Weapon.

TUSCALOOSA COUNTY LAW AND EQUITY COURT.

Hon. C. B. Verner, Solicitor, Tuscaloosa, Ala.

CHARACTER OF OFFENSE.	No. cases disposed of	Convictions	Acquittals	Nolle prosequies	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Abusive language -----	22	20	2							20		
Adultery and fornication-----	8	5		3						5		
Assault and battery-----	76	72	2	2				14		58		
Assault, intent to murder-----	8	6	1	1			2	4				
Assault, intent to ravish-----	2	2					2					
Attempt at burglary-----	2	2						2				
Burglary -----	1	1					1					
Burglary and grand larceny -----	9	8	1				3	5				
Changing hog mark-----	1		1									
Concealed weapons -----	56	49	1	6				19		30		
Concealed stolen property-----	1	1							1	1		
Cruelty to animals-----	5	3	2						2	1		
Defamation -----	1		1									
Disposing property under lien -----	1		1									
Disturbing religious worship -----	10	6	3	1						6		
Disturbing school -----	2	2								2		
Embezzlement -----	5	4	1					4		1		
False pretense -----	2			2								
Forgery, first degree-----	4	3		1			3					
Forgery, second degree-----	5	4		1				4				
Gaming -----	45	37	3	5				4		33		
Incest -----	1		1									
Jumping off moving train-----	1	1								1		
Larceny, grand -----	14	6	6	2			4	2				

TUSCALOOSA COUNTY LAW AND EQUITY COURT—Continued.

CHARACTER OF OFFENSE.	No. cases disposed of	Convictions	Acquittals	Nolle proseques	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Larceny, petit -----	23	21	1	1	---	---	---	12	9	9	---	---
Manslaughter, 1st degree_	1	1	---	---	---	---	1	---	---	---	---	---
Manslaughter, 2nd degree	1	1	---	---	---	---	---	1	---	---	---	---
Murder, 1st degree-----	10	6	1	3	---	1	5	---	---	---	---	---
Murder, 2nd degree-----	8	8	---	---	---	---	8	---	---	---	---	---
Obstructing railroad ----	1	1	---	---	---	---	---	---	---	1	---	---
Practicing medicine with- out license -----	1	1	---	---	---	---	---	---	---	1	---	---
Presenting gun -----	3	1	---	2	---	---	---	1	---	1	---	---
Public drunkenness -----	3	3	---	---	---	---	---	---	---	3	---	---
Putting out poison-----	1	1	---	---	---	---	---	---	---	1	---	---
Shooting across pub. road	3	---	3	---	---	---	---	---	---	---	---	---
Shooting into dwelling--	9	8	1	---	---	---	---	---	---	8	---	---
Throwing at train-----	1	1	---	---	---	---	---	---	---	1	---	---
Trespass after warning--	22	1	1	20	---	---	---	---	---	1	---	---
Unlawf'l injury to animal	3	3	---	---	---	---	---	2	---	1	---	---
Unlawfully riding on train -----	2	2	---	---	---	---	---	---	---	2	---	---
Vagrancy -----	8	5	3	---	---	---	---	1	---	4	---	---
Violating game law-----	5	4	---	1	---	---	---	---	---	2	---	---
Violating prohibition law	108	53	22	33	---	---	---	34	---	21	---	---
Violating Sunday law-----	10	10	---	---	---	---	---	---	---	10	---	---
Violati'g written contract	6	6	---	---	---	---	---	4	---	2	---	---
Total-----	511	369	58	84	---	1	29	113	12	227	---	---

Percentage of convictions in cases disposed of, 72.

Predominant crime, Violating Prohibition Laws.

WALKER COUNTY LAW AND EQUITY COURT.

Hon. Sheriff Lacy, Solicitor, Jasper, Ala.

CHARACTER OF OFFENSE.	No. cases disposed of	Convictions	Acquittals	Nolle proseques	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Abusive language -----	163	94	22	45	2			10		84		
Adultery and fornication_	30	7	15	8				6		1		
Allwing minor to play pool -----	1		1									
Arson, third degree-----	2	1		1				1				
Assault and battery-----	81	48	12	19	2			6		43		
Assault and battery with weapon -----	132	78	25	23	6			8		74		
Assault, intent to murder	12	7	2	2	1		7					
Assault, intent to ravish_	2	1		1			1					
Bastardy -----	1	1								1		
Betting in public places_	4	2		2				1		1		
Breaking fence -----	2		1	1								
Burglary -----	3	2	1				2					
Carnal knowledge, girl over ten -----	1	1						1				
Changing name unlaw- fully -----	2	1	1							1		
Concealed weapons -----	111	33	19	55	4			12		21		
Concealing stolen prop'ty	2			2								
Crime against nature-----	1	1					1					
Decoying child -----	4		3	1								
Defamation -----	22	4	3	12	3					4		
Defaulting road hand-----	3	1	2							1		
Disdaining evidence be- fore grand jury -----	1			1								

WALKER COUNTY LAW AND EQUITY COURT—Continued.

CHARACTER OF OFFENSE.	No. cases disposed of	Convictions	Acquittals	Nolle proseques	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Disturbing religious wor- ship -----	19	12	5	2	---	---	---	---	---	12	---	---
Disturbing females -----	16	15	1	---	---	---	---	---	---	15	---	---
Disturbing school -----	3	2	1	---	---	---	---	---	---	2	---	---
Disturbing females on railroad train -----	3	1	---	---	2	---	---	---	---	1	---	---
Embezzlement -----	6	1	2	3	---	---	---	---	1	1	---	---
False pretense -----	20	5	---	14	1	---	---	2	3	5	---	---
Forgery -----	2	1	---	1	---	---	---	---	1	1	---	---
Forgery, third degree -----	1	1	---	---	---	---	---	---	1	1	---	---
Gaming -----	27	17	6	4	---	---	---	5	---	12	---	---
Injuring animals -----	19	2	11	5	1	---	---	---	---	2	---	---
Injuring property -----	6	2	2	2	---	---	---	---	---	2	---	---
Intimidation -----	17	4	1	11	1	---	---	---	---	4	---	---
Keeping gaming table -----	1	---	---	1	---	---	---	---	---	---	---	---
Keeping sheep-killing dog -----	1	---	---	1	---	---	---	---	---	---	---	---
Larceny, grand -----	16	10	1	5	---	---	7	2	1	---	---	---
Larceny, petit -----	53	46	3	4	---	---	---	10	44	38	---	---
Manslaughter, 1st degree -----	4	4	---	---	---	---	4	---	---	---	---	---
Murder, 1st degree -----	8	2	5	1	---	---	1	---	---	---	* 1	---
Murder, 2nd degree -----	13	5	6	---	2	---	2	1	3	3	---	---
Obtaining goods under false pretense -----	10	3	1	4	2	---	---	---	---	3	---	---
Perjury -----	2	---	1	1	---	---	---	---	---	---	---	---
Peddling without license -----	1	1	---	---	---	---	---	---	---	1	---	---
Playing cards, pub. place -----	20	17	3	---	---	---	---	4	---	13	---	---
Practicing medicine with- out a license -----	4	1	---	3	---	---	---	---	---	1	---	---
Presenting gun -----	14	3	4	4	3	---	---	---	---	3	---	---

WALKER COUNTY LAW AND EQUITY COURT—Continued.

CHARACTER OF OFFENSE.	No. cases disposed of	Convictions	Acquittals	Nolle proseques	Abated or withdrawn	No. sentences to				Fines paid or secured	Insane Asylum	Pardoned
						Death	Penitentiary	Hard Labor	Jail			
Public drunkenness -----	48	30	10	8	---	---	---	2	---	28	---	---
Receiving stolen property	4	---	1	1	2	---	---	---	---	---	---	---
Resisting officer -----	4	---	3	1	---	---	---	---	---	---	---	---
Refusing to assist sheriff	2	---	---	2	---	---	---	---	---	---	---	---
Robbery -----	1	---	---	1	---	---	---	---	---	---	---	---
Seduction -----	1	---	1	---	---	---	---	---	---	---	---	---
Selling liquor to minor...	3	2	---	1	---	---	---	---	---	2	---	---
Selling mortg'd property...	6	3	---	3	---	---	---	---	---	3	---	---
Shooting across pub. road	7	---	4	2	1	---	---	---	---	---	---	---
Shooting into pass. train	1	---	---	1	---	---	---	---	---	---	---	---
Throwing missile at train	1	---	---	1	---	---	---	---	---	---	---	1
Trespass after warning...	50	4	9	37	---	---	---	1	---	3	---	---
Trespassing -----	7	1	1	5	---	---	---	---	---	1	---	---
Unlawful using of animal	3	2	1	---	---	---	---	---	---	2	---	---
Unlawfully riding train...	12	10	---	2	---	---	---	10	---	---	---	---
Vagrancy -----	63	32	18	12	1	---	---	12	---	20	---	---
Violating court contract...	3	1	---	2	---	---	---	---	---	1	---	---
Violating election law...	1	---	---	1	---	---	---	---	---	---	---	---
Violating game law -----	84	14	26	32	12	---	---	1	---	13	---	---
Violating prohibition law	240	79	48	107	6	---	---	43	2	29	* 3	---
Violating Sunday law ----	44	37	4	3	---	---	---	1	8	36	---	---
Violating written contract	3	2	1	---	---	---	---	1	---	1	---	---
Total -----	1454	654	287	461	52	---	26	139	58	386	---	---

* Appeals.

Percentage of convictions in cases disposed of, 44.

Predominant crime, Violating Prohibition Laws.

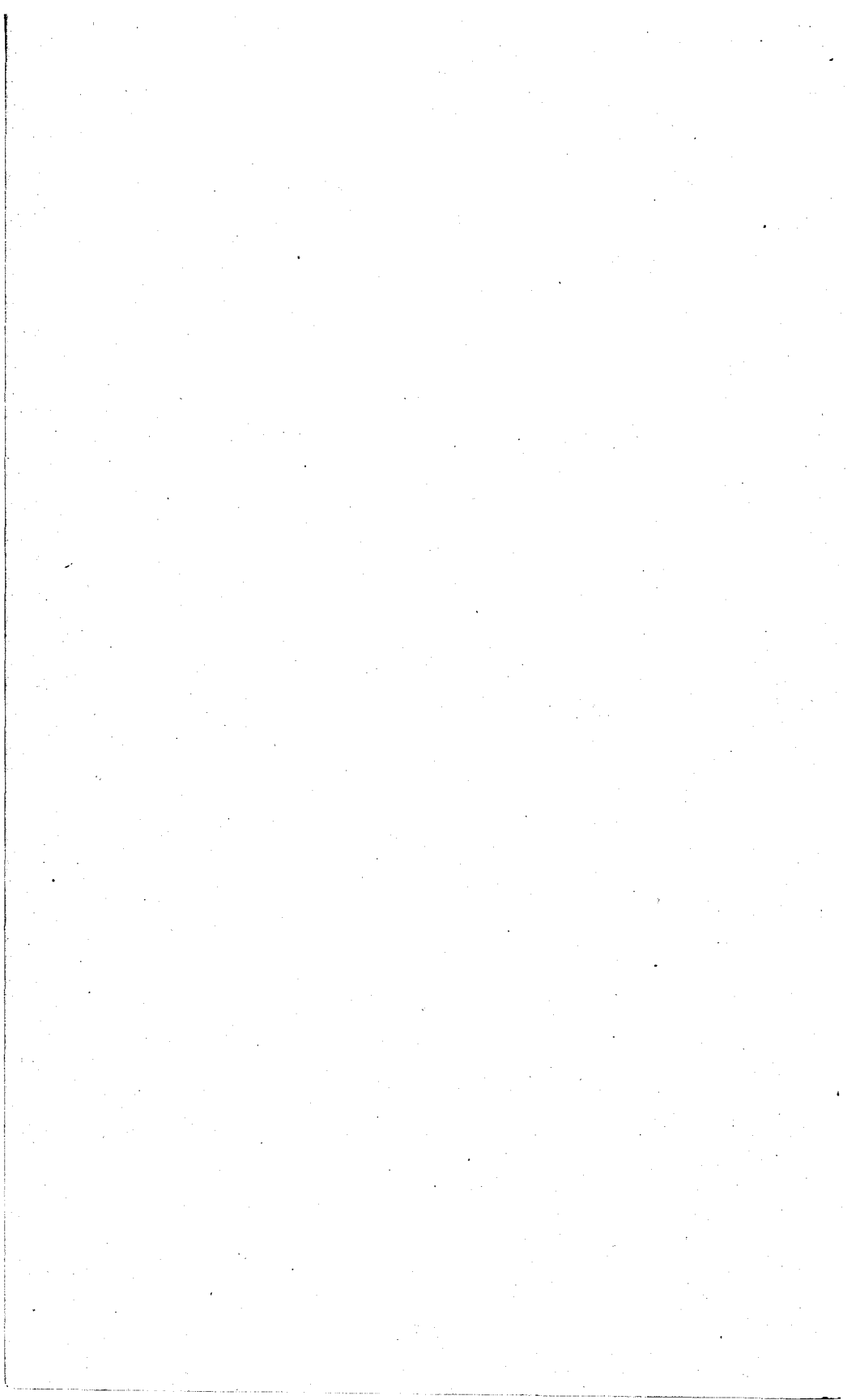
IV.

OPINIONS

OF

THE ATTORNEY GENERAL

**RENDERED DURING THE BIENNIAL PERIOD, WHICH HE
DEEMS OF GENERAL PUBLIC
INTEREST.**



IV.

OPINIONS OF THE ATTORNEY GENERAL

INTEREST FUND OF GIRLS' INDUSTRIAL SCHOOL—AUTHORITY TO DRAW WARRANT FOR, UNDER SECTION 1932 OF CODE.

November 7th, 1908.

Hon. Wm. W. Brandon,
State Auditor,
Montgomery, Alabama.

Dear Sir:—

In reply to your communication requesting me to advise you whether you have the authority under section 1932 of the Code of 1907 to issue your warrant to the Treasurer of the Girls' Industrial School for the accumulated interest due to June 30th, 1908, on the funds realized from the sale of lands granted by Congress under the congressional Act of Feb. 18th, 1899, to said school, and whether this claim is a legal one against the State of Alabama, I beg to advise you as follows:

Under said Section 1932 of the Code of 1907, which is a codification of the Act of Feb. 28th, 1907, (General Acts of Alabama, page 235) it appears to be the manifest intention and purpose of the State to execute in good faith the trust reposed in it by Congress when granting the lands to the State for the benefit of said school. It further appears that it was the purpose and intention of the Act of Congress and also of the Act of Feb. 17th, 1899 (General Acts 1898-9, page 222) whose provisions undertook to carry into effect the congressional act above mentioned, then pending as a bill before Congress, that the proceeds of the lands so granted, when sold or leased, should forever remain a fund for the use of said school. The Act of Dec. 10th, 1900 (Acts 1900-01, page 241) again expressed the intention of the State in this regard. Subsequently the Act of Sept. 16th, 1903 (General Acts 1903, p.

237) appropriated fifty thousand (\$50,000.00) dollars to this school for building purposes with the avowed intention and the declared condition that the said appropriation should be a payment or refunding of the funds realized from the sale of the lands so granted by Congress and that no interest should be hereafter paid on the said sum thus appropriated. I here quote Section 257 of the Constitution of Alabama of 1901, which was Section 2 of Article 3 of the Constitution of 1875:

"The principal of all funds arising from the sale or other disposition of lands or other property, which has been or may hereafter be granted or entrusted to this State or given by the United States for educational purposes shall be preserved *inviolable* and *undiminished*; and the *income* arising therefrom shall be faithfully applied to the specific object of the original grants or appropriations."

I now submit my conclusions:

In view of the trust reposed in the State of Alabama by the said Act of Congress, of the expressed purpose of the Legislature of Alabama and of the provision of the Constitution of Alabama just quoted, it is my opinion that the Act of Sept. 16th, 1903, in so far as it attempted to appropriate for building purposes any part of the *principal* of the funds realized from the sale or other disposition of lands granted as set out above by the Act of Congress for the use of the said Industrial School for Girls, being in conflict with the terms of the trust reposed in the State by Congress and in conflict with the Constitution of Alabama, is invalid. In my judgment this Act clearly violates the trust so reposed in the State by the Act of Congress as well as the Constitutional provision contained in Section 257, of the Constitution of Alabama.

Therefore, you are authorized under the law to issue your warrant on the State Treasurer in favor of the Girls' Industrial School, upon the order of the President of the said school, for the accumulated interest at the rate of 6 per cent. per annum on the whole amount of the fund heretofore realized and paid into the State Treasury from the sale of lands so granted by the said Act of Congress to said school.

OPINIONS OF ATTORNEY GENERAL.

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It follows, of course, that the claim which is submitted with your letter, purporting to be a statement of this accumulated interest, is a legal charge against the State under section 1932 of the Code. You should, however, investigate and determine for yourself the correctness of the facts and figures upon which the claim is based. I return to you the papers enclosed to me referring to this matter.

The validity of the said Act of Sept. 16th, 1903, not being questioned, was not, therefore, considered in my opinion to you on this subject under date of March 27th, 1907. This ruling is a modification of that opinion.

I remain,

Yours very truly,
ALEX. M. GARBER,
Attorney General.

LEGAL RIGHT OF GUARD TO SHOOT ESCAPING CONVICT.

November 7th, 1908.

Hon. J. Craig Smith, President,
Board of Convict Inspectors,
Montgomery, Alabama.

Dear Sir:—

Some days ago you requested me to advise you as to the legal right of the guard or guards to shoot convicts when they are attempting to escape. There is no statute in this State on this subject nor has the question been settled by the decisions of our Supreme Court.

On May 30th, 1891, Hon. William L. Martin, then Attorney General, advised the Governor of this State, Hon. Thomas G. Jones, at length on this subject. Attorney General Martin held that a guard might lawfully shoot a convict when he was attempting to escape *if the escape could not otherwise be prevented*; and that he need not stop to inquire whether the convict was a misdemeanor or a felon; but that in any case the necessity to shoot may become ultimately a question for the determination of a jury. I quote here at

length the opinion rendered by Mr. Martin to Governor Jones:

"In reply to your favor of the 27th inst., requesting my opinion 'as to the legal right of a guard or guards to shoot convicts when they are attempting to escape,' I have to say:

"We have no statute on this subject. The common law doctrine with respect to the right of an officer of the law to resort to violence in making arrests and preventing escapes may be briefly stated as follows: An officer may lawfully shoot a felon to prevent his escape, if the escape can not otherwise be prevented; but he cannot lawfully shoot a misdemeanant to prevent his escape, the law considering that it is better that the misdemeanant should escape than that his life should be taken. In such case the officer may use such force, short of dangerous violence, as may be necessary to detain the misdemeanant, and if resisted he may use force sufficient to overcome such resistance, even to the taking of life. To this effect see the following authorities: 1 Hale P. C., 489; 1 Hawkins P. C., 81; Wharton on Homicide, sections 214-216; Wharton, Cr. Law, 9th Ed., sections 404-407; 2 Bishop Cr. Law, 7th Ed., sections 648-650; Williams vs. State, 44 Ala. 41; 61 Am. Dec., 162-164; Dilger v. Commonwealth, (Ky.) 11 S. W. Rep. 651; Jackson v. State, 66 Miss., 89; 14 Am. St. Rep., 542; State v. Dierberger, 96 Mo., 666; State v. Renau, 2 B. J. Lea, (Tenn.) 720; Caldwell v. State, 41, Texas, 86.

"The common law as above stated was formulated with reference to individual cases of arrest and detention, rather than with reference to a system of penal servitude like ours, and is not strictly applicable to that system, which embraces both State and county convicts and takes in misdemeanants as well as felons. In some instances a number of each class of convicts may be under the same guard or guards. The statute provides for guards, whose duties are not defined, but are understood to be to keep safely the convicts and to prevent their escape. The Legislature contemplated that the guards

should use all suitable means to render effectual their service. In the very nature of things the observance of the common law distinction between felons and misdemeanants is impracticable; an attempt to enforce such distinction would render impotent the service.

"In *Clark v. U. S.*, Fed. Rep., 710, a case in which a soldier was prosecuted for shooting a military convict while he was attempting to escape by flight, the district court said:

"The common law distinction between felonies and misdemeanors is of no service in gauging the duty of a military guard with respect to a soldier in the act of escaping. His position is more analogous to that of an armed sentinel upon the wall of a penitentiary to prevent the escape of convicts.

"The penitentiary—and for this purpose we may use the House of Correction in Detroit as an example—may contain convicted murderers, felons of every grade, as well as others charged with vagrancy or simple breaches of the peace, and criminals of all description between the two. If the guard sees one of these prisoners scaling the wall and there is no other means of arresting him, may he not fire upon him without stopping to inquire whether he is a felon or a misdemeanor?"

"In *Jackson v. State*, 76 Ga., 473,—a case in which a guard was prosecuted for shooting a convict while attempting to escape, the Supreme Court of Georgia lays down the following:

"The guard is on duty to keep safely the convicts entrusted to him to prevent their escape. Therefore, if this convict was trying to escape, or if the circumstances were such as to lead the accused, the guard, as a reasonable man honestly to conclude in his own mind that the convict was trying to escape, and if, urged by this necessity pressing upon him in the discharge of official duty as guard, he did shoot and kill to prevent the escape, then the homicide is justifiable. So that the opinion of this court is, that in order to justify the homicide of a convict by the guard, the circumstances must be such as to en-

able the jury to find that the guard, as a reasonable man, was impressed, at the moment of the killing, that the necessity was upon him to kill in order to prevent the convict's escape, and that he did act and kill with intent solely to discharge duty and prevent escape."

"It is worthy of note that the Georgia court, in the case above referred to, makes no allusion to the common law distinction between felons and misdemeanants, nor is any inquiry made as to the grade of the convict who was killed.

"After very careful consideration, I have reached the conclusion and give my opinion accordingly, that a guard may lawfully shoot a convict when he is attempting to escape, *if the escape can not otherwise be prevented*; and need not stop to inquire whether the convict is a misdemeanor or a felon.

"In any case the necessity to shoot may become ultimately a question of the determination of a jury."

I concur in the general conclusions reached by Mr. Martin on this subject. No rule can be laid down to fit every case and in the application of the general principles of law governing this class of cases each particular case must of necessity stand on its own merits in the light of the peculiar facts surrounding it.

I beg to remain,

Yours very truly,
ALEX. M. GARBER,
Attorney General.

**BONDS OF TAX ASSESSORS AND TAX COLLECTORS—WHEN
REQUIRED TO BE FILED UNDER SECTIONS
2095 AND 2161 OF CODE.**

November 12th, 1908.

Hon. Wm. W. Brandon,
State Auditor,
Montgomery, Alabama.

Dear Sir:—

You requested me on yesterday to advise you when the tax assessors and tax collectors of the State are required by law to file their bonds in the offices respectively of the Judge of Probate and the State Auditor.

Under Section 1576 of the Code of 1896, tax assessors and tax collectors were elected on the first Monday in August, 1900, and every fourth year thereafter. Under Sections 1644, 1645 and 1646 of the Code of 1896, the Board of Supervisors was required within a short time after the election to ascertain and declare the result thereof. The General Election Act of 1903, changed the time of the election of these officers from August until November; there being no substantial change made in the time in which the result of the election must ascertained and declared.

The Act approved October 1st, 1903, (General Acts 1903, page 370) required the tax assessor and tax collector to be elected on the first Tuesday after the first Monday in November, 1904, and every fourth year thereafter and provided that their terms of office should begin "on the first day of August, 1905, and every fourth year thereafter." The tax assessors and tax collectors now holding office in this State were elected at the time named in this Act and assumed the duties of their offices on the first day of August, 1905, and their respective terms will expire on the first day of August, 1909. The Act was codified into Sections 2094 and 2160 of the Code of 1907, and no change is made either in the time of the election or the time when they shall respectively assume the duties of their offices.

Under Sections 3923 and 3994 of the Code of 1896 the tax assessors and tax collectors were required before enter-

ing upon the discharge of the duties of their offices to execute bonds in duplicate and each of these sections provided that "one of such duplicates must be filed and recorded in the office of the Judge of Probate, and the other must be filed in the office of the Auditor."

The Sections of the Code of 1896 just referred to now appear in the Code of 1907 as Sections 2095 and 2161. The concluding clause of these Sections was changed so as to read as follows, the new matter being underscored: "One of such duplicates shall be filed and recorded in the office of the Judge of Probate, and the other shall be filed in the office of the State Auditor, *on or before the first day of July next after his election.*"

Section 1493 of the Code of 1907 requires the official bond of public officers required by law to be filed in the office of the State Auditor must be filed therein within *forty days* after the declaration of election; and Section 1495 of the Code of 1907 provides that such bonds when required to be filed in the office of the Judge of Probate must be filed therein within *fifteen days* after the declaration of election. But for the concluding language of Sections 2095 and 2161, to-wit, "on or before the first day of July next after his election," the tax assessors and tax collectors would be required to file their respective bonds in the offices of the State Auditor and the Probate Judge within forty days and fifteen days respectively after their elections under Sections 1493 and 1495 of the Code. Thus there is presented a conflict between the Sections last mentioned and Sections 2095 and 2161 which later sections deal specifically with the bonds of the tax collector and tax assessor.

Our Supreme Court has said that, "In construing legislative acts, it is the duty of the Court always, if possible, to harmonize apparent inconsistencies and reconcile conflict." (State v. Houghton, 142 Ala. 90-95.) And further, "In order to harmonize legislative acts, the Courts are required to adopt, if necessary, rules of fair and liberal construction. If it be possible to reconcile the two statutes so as to permit both to stand, without violating sound principles of construction, this will be done." (Roberts v. Pippen, 75 Ala., 107.)

In this connection the well established proposition of law should be noted: "It is an old and familiar rule that where there is in the same statute a particular enactment and also a general one, which in its more comprehensive sense would include what is embraced in the former, the particular enactment must be operative and the general enactment must be taken to affect only such cases within its general language as are not within the provisions of the particular enactment." (26 A. & E. Ency. Law, 2nd Ed., 619.

Applying the principles of law just quoted to the facts of this case, it becomes necessary to reconcile the apparent conflict in the statute, if that is possible to be done. Sections 1493 and 1495 of the Code deal in a general way with the question of filing official bonds in the offices of the State Auditor and the Judge of Probate; and no office is in terms mentioned. While Sections 2095 and 2161 of the Code may be regarded as a particular enactment, for they deal in specific terms with tax assessors and the tax collectors. So that Secs. 1493 and 1495 must be taken to affect only such bonds within the general language there used as are not within the provisions of the particular and later enactments. Turning to the language of Section 2095 and 2161, a reading of the concluding sentence of the section shows very clearly that it was the intention of the writer to require the bonds of these officers to be filed *both* in the office of the Auditor and in the office of the Judge of Probate on or before the first day of July next after their election. Unmistakably, the time of the filing following as it does the requirement that the bond should be filed in the office of the Auditor, extends the time for the filing in that office to the first day of July. The question has been suggested that while this is true, yet the concluding sentence of these sections does not postpone the time for the filing of the bond in the office of the *Judge of Probate beyond* the time named in Section 1495 and, therefore, that the bond must be filed in that office within fifteen days after the declaration of the result of the election. But such construction would be wholly inconsistent with the purpose and reason of the enactment; and would in my judgment be opposed to the plain meaning thereof. While these officers were elected in November, they do not take their offices until August, 1st, 1909. Meanwhile, the present officers are in the full dis-

charge of their duties and are under bond to the State. It would be a vain and useless thing to exact a bond of the incoming officers, covering a period of some seven months before any possible liability could accrue thereunder. Doubtless, these considerations induced the Legislature to add the last clause of this statute permitting the filing of the bond on or before the first of August. But aside from mere argument, the terms of the statute do not permit of any other construction than that the bond may be filed in both offices on or before the first day of July.

The construction which I have mentioned above and which in my judgment is a proper one, leaves Sections 1493 and 1495 operative with respect to bonds other than those of the tax collector and tax assessor. But if it is impossible to reconcile the statutes above mentioned so as to give each a field of operation, it is my judgment that Sections 2095 and 2161 must control. The rule is stated as follows: "Where there are two conflicting Sections in a Code or other compilation of statutes, that section prevails which is derived from a source which can be considered as the last expression of the law-making power, without regard to the relative position of such sections in the Code". (26 A. & E. Ency. Law 2nd. Ed. 735). Section 1493 and 1495 of the present Code, have been practically the unchanged law of this State since 1852; while the particular clause of Sections 2095 and 2161, which give rise to this question, was added by the Legislature of 1907; and clearly must be considered as the last expression of the law-making power.

I, therefore advise you that the tax assessors and tax collectors of the State may file their bonds in the offices respectively of the Judge of Probate and the State Auditor at any time before the first day of July, 1909.

I remain,

Yours very truly,

ALEX M. GARBER,

Attorney General.

**CERTIFICATE OR LICENSE TO AN INSURANCE AGENT NOT
TRANSFERABLE.**

November 19th, 1908

Hon. Frank N. Julian,
Insurance Commissioner,
Montgomery, Alabama.

Dear Sir:—

You requested me in your letter of November 9th to advise you whether or not the certificate of authority for an individual agent writing or soliciting insurance for it in this State obtained from you by an Insurance Company licensed to do business in this State, where the party named in the original certificate has discontinued his service during the time covered by said certificate for such insurance company, can be transferred to and used by another and different agent of said company, without the payment of any further fee to the Insurance Commissioner, as provided under Section 4561 and 4577 of the Code.

This certificate of authority issued to an individual agent is to all intents and purposes a license to transact business in this State for the period named therein, and is so regarded and called. Such certificate of authority, therefore, being nothing more than a license, is governed by the rules of law applicable to licenses. It has been uniformly held that a license is not a contract on the part of the State but merely a grant of permission and can be revoked at any time, and is not transferable. And, except in certain cases, within which the case under consideration does not fall, there is no provision for a refund of any part of the original sum paid for such license for the unused part thereof. Whatever may be the equities of this case, the law fails to provide for any restitution where an individual agent severs his connection with an insurance company before the expiration of the certificate of authority granted to him by your Department. The law further requires the payment of \$3.50 to your Department for each agent's license or certificate issued by you. You would not be authorized, therefore, in cases of this kind to allow a surrender of an unexpired certificate and issue another cer-

tificate in the name of a different party in lieu thereof without charging fees prescribed in Section 4577 of the Code.

I remain,

Yours very truly,
ALEX M. GARBER,
Attorney General.

**POWERS AND AUTHORITY OF STATE TAX COMMISSION—
ITS AUTHORITY TO SET ASIDE ASSESSMENT
OF TAX ASSESSOR.**

December 1st, 1908.

Hon. Wm. W. Brandon,
State Auditor,
Montgomery, Alabama.

Dear Sir:—

You have submitted to me two letters from Capt. D. Z. Goodlett, Tax Collector of Calhoun County, with the request that I advise you concerning the inquiry contained in the above letters.

It appears that the State Tax Commission, at a meeting of said Commission held in the court house of Calhoun County in September 1908, set aside and held for naught certain assessments for 1908 made by the Tax Assessor of said County, and reassessed and revalued the property for said year so assessed by the Tax Assessor of Calhoun County. It further appears that after the State Tax Commission had taken such action and reassessed and revalued the property, on October 7th, 1908, "the Board of County Commissioners" assessed the same property, fixing the amount of assessment different from the assessment made by the State Tax Commission. Captain Goodlett, as Tax Collector, desires to know on which of these two assessments should he collect the taxes due the State and County for 1908.

The powers, authority, and duty of the State Tax Commission are defined in Section 2223 of the Political Code. Sub-division 13 of this Section clothes the Tax Commission

with the authority and power to set aside and hold for naught any valuation, or assessment of property made by any County officer within this State or by any Board of Revenue and to reassess said property.

Under the facts as stated above, I think the State Tax Commission had the authority to set aside the assessment of the Tax Assessor and re-assess this property and that such action by it was within the powers delegated to it under sub-division 13 of Section 2223 of the Political Code. And under Section 2233 of the Political Code such assessment of the Tax Commission is conclusive upon the Tax Collector and the Board of County Commissioners of Calhoun County.

I remain,

Yours very truly,
ALEX M. GARBER,
Attorney General.

IN RE TENURE OF OFFICE OF JUDGE OF THE COUNTY
COURT OF COFFEE COUNTY—FAILURE OF SENATE
TO ELECT SUCCESSOR UNDER LOCAL ACT
CREATES VACANCY.

December 10th, 1908.

Hon. B. B. Comer,
Governor of Alabama,
Montgomery, Alabama.

Dear Sir:—

On October 14th you submitted to me an inquiry in regard to the tenure of office of Hon. H. H. Blackman, Judge of the County Court of Coffee County, and requested me to advise you whether or not there exists a vacancy in said office.

Without adverting in detail to the history of the local legislation which established the County Court of Coffee County, it is sufficient for the purposes of this opinion to refer only to Section 18, of the amendatory act of Sept. 29th, 1903, (Local Acts 1903, page 398). This act is carelessly constructed and it is difficult to see how the Legislature passed it in its present

shape. Section 18 of the act with which this opinion deals, is a glaring example of hasty legislation. This Section provides first, that;

"The Judge of said Court shall be elected by the Senate of Alabama and his term of office shall be for 6 years; provided that the present incumbent's term of office shall not expire until 1907 and until his successor is elected and qualified".

Then it proceeds in the same paragraph in a subsequent sentence to provide as follows;

"In case of vacancy caused by resignation, removal or death of the Judge, or by any other cause, the Governor shall fill said vacancy by appointment, and the person so appointed shall hold his office by virtue of said appointment until the *election herein provided for the election of his successor by the qualified voters of the County.*"

The Act no where contains any other provision concerning the election herein provided for the election of his successor by the qualified voters of the county." There is an entire omission in the Act to provide for such election. Hence, we have here in the same Section, two modes for the election of the Judge of this Court. One provision makes the Judge of said Court elective by the Senate of Alabama in 1907, extending the term of the present incumbent "*until 1907 and until his successor is elected and qualified*", and the other clause provides that in case of "vacancy caused by resignation, removal or death of the Judge or by any other cause", the Governor shall fill said vacancy and the appointee of the Governor shall hold office "until the election herein provided for the election of his successor by the qualified voters of the county", but the manner and means of the election "*herein provided*" is not, in fact, incorporated in any part of the Act. There is manifestly a conflict between these two provisions of the same statute. The first is complete, clear and susceptible of execution, while the other is patently imperfect, uncertain and lacking in proper machinery for its execution. Under the ordinary rules of construction, the first clause, which is sensible

and susceptible of execution, should be taken as the expression of the legislative intent rather than the subsequent incomplete and imperfect clause. Moreover, it is difficult to imagine that the Legislature intended to provide one method of electing a judge of this court where the incumbent at the expiration of the prescribed term was the same officer who had been previously elected by the Senate, and a wholly different method where the incumbent at the expiration of the prescribed term happened to be an appointee of the Governor to fill an unexpired part of such term.

I have reached the conclusion on this point that under Section 18 of the Act, the Judge of said Court is elected by the Senate of Alabama and holds office for the term of 6 years and until his successor is elected and qualified. There seems to be no escape from this decision, although the term of office which began January 1907, will end January 1913, two years after the Legislature convenes in January 1911, and two years before this body convenes in January 1915.

The Senate of Alabama failed to elect a Judge of this Court in 1907, as provided by Section 18 of the Act, and the question is now presented as to whether there exists a vacancy in said office which can be filled by appointment of the Governor.

This is a question difficult of solution and the courts of the different states are divided on it. The weight of authority seems to be in line with the general rule laid down in Throop on "Public Officers", Sec. 330, which is as follows:

"Where a statute, creating an office, and fixing the duration of the term thereof, provides that the officer shall be elected by the Legislature, and shall hold his office until his successor is elected and qualified; the failure of the Legislature to elect a successor, at the expiration of the incumbent's term does not create a vacancy which may be filled by the Governor, under a provision authorizing him temporarily to fill vacancies; but the incumbent holds over until his successor is elected by the Legislature."

Mechem on Public Officers, sections 128 and 129, adopts the same construction as the settled principle of the law, which

is followed by the Supreme Courts of Indiana, California and Pennsylvania. This interpretation proceeds upon the idea that there is a person remaining in office qualified to discharge the duties of the office and upon the assumption that the wiser and more prudent course is, in case the electoral body fails to discharge its functions, to authorize the incumbent to hold over until the succeeding election, rather than that a vacancy should occur to be filled by the appointing power.

On the other hand the Supreme Court of Alabama, Missouri and several other states have laid down the opposite rule and have adopted the doctrine that an office is vacant within legal intendent, and for all purposes of election or appointment, as well when *the official term of the occupant has expired, as in case of his death, resignation or removal.*

State ex rel Atty. Genl. vs. Thomas, 102 Mo. 85;
Atty. Genl. vs. Burnham, 61 N. H. 594;
Montgomery vs. Hughes 65 Alabama, 201;
Lane vs. Kalb 92 Alabama, 645;
Prowell vs. State 142 Alabama, 80;
Sandlin vs. Dowdell, 143 Alabama, 521.

It was said by Judge Brickell, who delivered the opinion of Court in the case of Montgomery vs. Hughes, *supra*, in referring to the clause "until his successor is duly elected and qualified", that "it was never within the legislative contemplation, that, under this clause an official term could be prolonged beyond a reasonable time for the newly elected officer to qualify. If for such time he failed to qualify, there would be a vacancy to be filled as the Charter directs. This is the whole scope of the clause, and so construing it, harmonizes the whole provision and effects the intent of the Legislature, that the term of office shall be two years, and not of *indefinite duration.*"

The Supreme Court of Alabama also held in the case of Prowell vs. State, *supra*, opinion by Judge Simpson, that "we regard it as the settled law of this State that the words "until his successor is elected and qualified" was never intended to prolong the term of office beyond a reasonable time, after the election, to enable the newly elected officer to qualify". And

in the case of Sandlin vs. Dowdell, *supra*, this Court went further in an opinion delivered by Judge Denson and declared that "the hold-over clause in the statute must not be construed as authorizing *unlimited official terms*".

Under the influence of the expressions of the Supreme Court of Alabama on this question in the cases cited, I hold that the failure of the Senate to elect a successor to Judge Blackman "in 1907" had the effect of creating a vacancy in the office of the Judge of said Court, which may be filled by the Governor.

"Vacancies in all State and county offices are filled by appointment of the Governor, except as otherwise provided."

Political Code, Section 1474.

I beg to remain,

Yours very truly,
ALEX M. GARBER,
Attorney General.

**TAX SALES—REFUND OF PURCHASE MONEY BY STATE
UNDER SECTION 4106—WHEN PURCHASER
ENTITLED TO REFUND.**

December 18th, 1908.

Hon. Wm. W. Brandon,
State Auditor,
Capitol.

Dear Sir:—

On May 14, 1908, you handed to me the application of Mr. Gaunt Crebs, filed by Mr. W. F. Thetford, Jr., his attorney, to have refunded to him the purchase money paid by him to the State of Alabama for the purchase of certain property from the State which had theretofore been sold at tax sale and purchased by the State.

The application contains the following statement:

"This application is made for the reason and upon the basis that the property when sold to the state for taxes was wrongfully sold, and that no taxes were due on the same, the different parcels thereof having been given in and taxes paid thereon by the persons who owned the property at that time, as will more fully appear from the affidavit or certificate of the tax officers of Mobile County, to be attached hereto. This application is made under Section 4106 of the Code, (of 1896), the purchase money for the same having been paid into the State Treasury."

Section 4106 of the Code provides that:

"When land which has been bid in for the State at tax sales has been sold by the State at private sale, and the purchase money has been paid into the State Treasury, and it shall be made to appear to the satisfaction of the Auditor and of the Governor, that such tax sale was invalid by reason of the fact that the taxes for which the land was sold were not due, the Auditor, with the approval of the Governor, may, upon the surrender and cancellation of the deed executed by the Auditor, to such purchaser, draw his warrant on the State treasurer, in favor of such purchaser, his heir or representative, for the amount of money so paid to the State for such land, and the treasurer must pay the same. But no such sale shall be cancelled and the purchase money refunded unless application therefor be made within two years from the date of such sale."

I assume that the lands referred to in Mr. Crebs' application were sold to him by the State at *private sale*, and that the purchase money was paid into the State Treasury. The question then is presented whether the purchase money should be refunded to the purchaser under this statute if it is made to appear to the satisfaction of the *Auditor and of the Governor* that no taxes were due on the lands at the time of the sale, for that the respective owners thereof had assessed the same and paid the taxes thereon prior to the sale. When these facts are made to appear to the *satisfaction of the Governor and Auditor*, a case is presented which imposes the duty upon the

State to refund the purchase money, for under those facts "the taxes for which the land was sold were not due". It has been expressly held by our Supreme Court that "a decree of the Probate Court ordering the sale of land for taxes is not conclusive on the owner as to its validity, *where the taxes were not due*, and that he may defeat an action of ejectment brought by the purchaser at the tax sale, *by providing that he had paid the taxes* prior to the institution of the proceeding".

Crook v. Anniston City Land Co., 93 Ala., 3;

Watson v. Kent 78 Ala., 602;

Riddle v. Messer, 84 Ala., 236.

In all cases, therefore, where it is made to appear to the *satisfaction* of the *Auditor* and of the *Governor* that the taxes for which the lands were sold were paid by the owners thereof prior to the sale, or "the taxes for which the land was sold were not due", such tax sale was invalid and the purchase money paid to the State should be refunded to the purchaser under said section 4106.

This opinion is confined to the first class of lands referred to by Mr. W. F. Thetford, Jr., in his letter to me of May 15th, 1908, and this subject, to-wit, those "lands which Mr. Crebs purchased from the State which had been sold for taxes and bought by the State *less than twenty years before the State sold them to Mr. Crebs*".

In regard to those cases where the lands had been purchased by the State more than twenty years before they were sold to Mr. Crebs the statute is not clear and, therefore, I resolve the doubt in favor of the State and advise you not to enter into negotiations for a refund of any of the purchase money in such cases.

You will further bear in mind, that, under said Section 4106 of the Code, the *application* for the rerund of the purchase money so paid to the State, must have been made by Mr. Crebs "within two years from the date of such sale".

I herewith return the papers handed me in this matter.

I remain,

Yours very truly,
ALEX M. GARBER,
Attorney General.

**MUNICIPAL CODE, SCHOOL LAWS—WHEN NO TERM IS
MENTIONED IN THE ACT CREATING COUNTY BOARD OF
EDUCATION, THEY HOLD OFFICE, SUBJECT TO RE-
MOVAL AT THE PLEASURE OF THE STATE
BOARD OF EDUCATION—SEC. 177 OF MU-
NICIPAL CODE DOES NOT APPLY
TO BALDWIN COUNTY.**

December 23rd, 1908.

Hon. H. C. Gunnels,
Superintendent of Education,
Montgomery, Alabama.

Dear Sir:—

You submitted to me several days ago a letter addressed to you by Mr. J. S. Lambert, Superintendent of Education of Baldwin County, dated November 27th, 1907, and requested me to advise you on the two propositions submitted in Mr. Lambert's letter, viz:

FIRST. Whether the provisions of the Municipal Code relative to public school systems apply to cities and towns in Baldwin County; and

SECOND. Whether the re-districting Act approved September 30th, 1903, (General Acts 1903, p. 478) applies to Baldwin County.

Answering your questions seriatim, I beg to advise you,—

FIRST. Section 177 of the Municipal Code provides, "The provisions of this Act, relative to public school system shall not apply to cities and towns in counties * * * where the members of the Board hold office for life." It is contended by Superintendent Lambert that the members of the Baldwin County Board of Education hold office for life and, therefore, that the Municipal Code does not apply to the school system of the cities and towns in that county. This Board of Education was created and the members thereof were appointed and hold their offices under the Act approved February 28th, 1901, General Acts 1901, p. 1446; and Section 2 of this Act provides "that it shall be the duty of the State Superintendent of Education immediately after the passage and approval of this Act to appoint four additional members of the Board of

Education for Baldwin County * * * who, together with the County Superintendent of Education will constitute the Board of Education for Baldwin County, and who will have general supervision and control of all the public schools of said county". There is no provision of this Act nor of any prior or subsequent Act so far as I can find which in any way fixes the term of office of the members of this Board who are thus appointed.

It has been many times held by the Supreme Court of the United States that in the absence of specific provision to the contrary that power of removal from office is incident to the power of appointment; and that where the term of office is not fixed, the officer holds at the pleasure of the appointing power; and this is recognized to be the general rule of law.

Keim v. United States, 177 U. S. 290;
Shirliff v. United States, 189 Ala., 315;
23 A. & E. Ency. of Law (2nd Ed.) 410.

Moreover, Section 29 of our Constitution provides "that no office shall be created, the appointment to which shall be for a longer time than during good behavior." And it is also the rule of law that if the language of the statute fixing the term of the office is ambiguous, an interpretation should be followed which limits the term to the shortest time.—(23 A. & E. Ency. Law, 2nd Ed. 409). Applying these principles of law to the present case it is my conclusion, and I so advise you, that the aforesaid members of the Board of Education of Baldwin County do not hold their offices for life; that they hold their offices at the pleasure of the State Superintendent of Education who is the appointing power in the Act; and that they are removable at the pleasure of that officer. It, therefore, follows that the provisions of the Municipal Code relative to public school system apply to cities and towns in Baldwin County.

SECOND. Section 6 of the re-districting law provides, that: "The provision of this Act shall not apply to any county heretofore districted by authority of a special law and which has a special levy from the county for the support of the public schools therein." (General Acts 1907, page 482). Baldwin County was districted under the act above mentioned, approved February 28th, 1901. This act was a special law

applying alone to Baldwin County. The act authorized a special levy from the county for the support of public schools therein and this levy is still effective. Therefore, it follows that the provisions of the present re-districting law do not apply to Baldwin County.

I enclose herein Mr. Lambert's letter addressed to you and above referred to.

Yours very truly,
ALEX. M. GARBER,
Attorney General.

**SECTION 2117 OF THE CODE—WHERE THE TITLE OF A
SECTION MAKES DIFFERENT PROVISION FROM
THE BODY OF THE SECTION, THE LATTER
MUST GOVERN.**

January 22nd, 1909.

The State Tax Commission of Alabama,
Montgomery, Alabama.

Gentlemen:—

I am in receipt of your communication of January 19th requesting me to advise you with respect to the penalty required under Section 2117 of the Code.

In compliance therewith, I beg to state that in my judgement the body of the section which requires a ten per cent penalty governs. I am unable to state whether this conflict betwixt the title and the body of the Act is an error or an intentional change in the codification of the New Code, in the absence of a marginal note indicating that the section was revised or written by the Code Committee. This Section of the Code of 1896 provided for a five per cent penalty. Regardless of these considerations, we must follow the plain language of Section 2117. This places the penalty at ten per cent of the actual cash value of the assessment.

I remain,

Yours very truly,
ALEX. M. GARBER,
Attorney General.

**PENSIONS—DEGREE OF PROOF REQUIRED TO ENTITLE
WIDOW OF CONFEDERATE VETERAN TO BE
PLACED ON PENSION ROLL.**

January 28th, 1909.

Hon. Wm. W. Brandon,
State Auditor,
Montgomery, Alabama.

Dear Sir:—

I have the following inquiry from your Department under date of January 9th, 1909:

“What is necessary before the Auditor can place upon the pension roll the widow of a Confederate Soldier, who is already upon the roll? Will it be necessary to have the County Board and the State Board pass upon the evidence?”

Section 2009 of the Political Code is in the following language:

“The widow of any Confederate veteran whose name is now on the pension roll as now existing shall be placed on the pension record, and she shall become entitled to the amount of money allowed by law to the widows of Confederate veterans upon proof by two reputable witnesses that she is the widow of such Confederate veteran and has not remarried since the death of her husband.”

You will observe that the widow named therein shall be placed on the pension record upon certain proof by two reputable witnesses. It is my judgment that the affidavit of two witnesses deposing to the fact required and the certification by the County Board that the two affiants so testifying are reputable persons, would constitute a substantial compliance with the law on this subject.

I remain,

Yours very truly,
ALEX. M. GARBER,
Attorney General.

**DEFENDANT CONVICTED OF A FELONY MAY ELECT TO
PERFORM HARD LABOR FOR STATE PENDING HIS
APPEAL TO SUPREME COURT.**

January 29th, 1909.

Hon. J. Craig Smith, President,
Board of Convict Inspectors,
Montgomery, Alabama.

Dear Sir:—

I rendered you an opinion under date of June 11th, 1908, to the effect that there was no statute authorizing a defendant who had been convicted of a felony and who had taken an appeal from the judgment of conviction to the Supreme Court, to elect to perform hard labor for the State during the pendency of such appeal.

I have had occasion to further investigate this question and find it is balanced in considerable doubt under the influence of the opinion of the Supreme Court in the case of *White vs. State* in 134 Alabama, page 197. An examination of the Criminal Code of 1907 also reveals the existence of an act of the Legislature, approved August 13th, 1907, dealing with this subject, which is codified in the Code under Section 6577. Construing Section 6249 in connection with the last named Section, I feel justified in withdrawing my opinion in this matter rendered you on June 11th, 1908, and advising you that a defendant convicted as aforesaid is authorized, pending his appeal to the Supreme Court, to perform hard labor for the State. In the event his case should be reversed Section 6578 provides a method for paying him the amount earned while performing hard labor during the pendency of his appeal.

I remain,

Yours very truly,
ALEX. M. GARBER,
Attorney General.

UNIVERSITY LAW DEPARTMENT ENTITLED TO TEN VOLUMES OF CODE AND ALABAMA REPORTS.

January 29th, 1909.

Hon. Frank N. Julian,
Secretary of State,
Montgomery, Alabama.

Dear Sir:—

I have received your communication of December 17th containing the following inquiry.

“Section 6002 of the Code of Alabama of 1907, provides that the Secretary of State shall distribute to the University of Alabama for the use of the law department one copy of each volume of the Supreme Court Reports. Section 1884 of said Code provides that the Secretary of State shall supply the Law Department of the University with ten copies of each volume of the reports of the Supreme Court, from time to time, as published. Kindly advise this Department which section of said Code is to be followed in making the distribution and supplying the Law Department of the University of Alabama with the reports.”

Section 16 of An Act “To regulate, control and direct the management of the University of Alabama”, approved March 3rd, 1903, in effect amended or enlarged Section 3684 of the Code of 1896 by requiring the Secretary of State to supply to the Law Department, in addition to the three copies of the Code of Alabama as provided by said Section, three copies of the Acts of the Legislature and three copies of each volume of the current reports of the Supreme Court, as the same might, from time to time, be published. Section 3684 of the Code of 1896 appears now in the Code of 1896 as Section 1884 in Article 21, Chapter 41, devoted to the University of Alabama, and is in the following language:

“The Secretary of State shall supply to such law department ten copies of the Code of Alabama and ten copies of the acts of the legislature, and ten copies of each volume of the current reports of the Supreme Court, as the same may, from time to time, be published.”

Section 3871 of the Code of 1896 has been carried forward in Article 5 of the Code of 1907 which deals with the reporter and reports as Section 6002. This Section directs that one copy of the Supreme Court reports shall be furnished to the University of Alabama for the use of the Law Department, this Section being identical in this respect with Section 3871 of the Code of 1896.

The two Sections, 1884 and 6002 of the Code of 1907 were adopted contemporaneously by the Act adopting the new Code, and apparently are in conflict. When Section 1884 is viewed as a special statute embraced under the Article of the Code specifically dealing with the University of Alabama, and it is observed that Section 6002 is a statute providing for the general distribution throughout the State of the Supreme Court Reports, it is clear that the Legislative intent was that both should have operative effect as far as practicable, and if in conflict in any respect then that the special statute should prevail over the general pursuant to the universal cannon of construction of statutes that unless a contrary intention is clearly expressed, a general statute does not operate to repeal a special statute.

It may be that Section 1884 is not strictly speaking a "special law" within the meaning of Section 110 of the Constitution, but it permits the analogy at least, and will be so regarded here and the application of the general rule of construction in such cases, results in the conclusion that the authoritative mandate of Section 1884 must govern you in the distribution to the law department of the University of Alabama of the current volumes of the Supreme Court Reports. Section 6002 must yield.

A similar deduction is reached when the two sections are viewed simply as incompatible enactments.

Attention has been directed to the Act of Mar. 3, 1903, and the respects in which it enlarged Section 3684 of the Code of 1896. It is clear that it also operated to repeal or change that part of Section 3871 of the Code of 1896 which provides that only one copy of the reports should be distributed to the University of Alabama for the use of the law department.

It is also to be observed that in the incorporation of Section 16 of the above Act in the Code of 1907, the word "three"

whenever it appears therein has been changed and the word "ten" inserted in lieu thereof, although there is an absence of the usual marginal "r. c. c.".

It is obvious that the two Sections of the Code under consideration are repugnant, and both cannot stand. It is well established by the decisions and law writers that where *repugnant statutes* are incorporated in the same code, "the original statutes, their dates and even their judicial interpretation" will be consulted to ascertain the legislative intent.

Steel vs. State, 61 Ala., 213.

Applying this principle, every inference is in favor of Section 1884, for manifestly Section 16 of the Act of March 3, 1903, superseded the provisions of the Code of 1896, and the Legislature evidently intended it to continue to govern when incorporated and adopted in its revised state in the Code of 1907.

I remain,

Yours very truly,
ALEX. M. GARBER,
Attorney General.

**REPRESENTATIVES AND SENATORS MUST RESIDE IN
THEIR RESPECTIVE COUNTIES—INTENTION TO
ABANDON FORMER RESIDENCE MUST BE
SHOWN BEFORE THE LAW WILL PRE-
SUME A CHANGE.**

March 2, 1909.

Hon. B. B. Comer,
Governor of Alabama,
Capitol.

Dear Sir:—

I am in receipt of your letter of February 24th relative to the present status of Mr. D. F. Crum as a member of the Legislature from Lowndes County.

In his letter to you, Mr. Crum merely states that he is "now in Conecuh County" and that he "has not voted anywhere except in Lowndes." His general statement fails to afford sufficient information to enable me to pass intelligently upon the inquiry, even should your Excellency deem it a subject properly coming in its present shape, within the jurisdiction of your Department. Section 51 of the Constitution provides that "each House shall choose its own officers and shall judge of the election returns and *qualifications of its members.*"

In this connection, I beg to call your attention to the following Constitutional provision:

"Whenever a vacancy shall occur in either House, the Governor shall issue a writ of election to fill such vacancy for the remainder of the term." (See Sec. 46 of the Constitution.)

And also the following:

"And they (senators and representatives) shall reside in their respective Counties or districts during their terms of office." (Sec. 47 of the Constitution.)

As bearing on the same subject, I quote the following Code provisions:

"Special elections are to be held in the following cases:

1. When a vacancy occurs in the office of senator or representative in the Legislature, when the Legislature will be in session prior to the next general election for that office," etc. (Section 439 of the Code.)

"Any office in this State is vacated * * *.

3. By ceasing to be a resident of the State, or of the division district, Circuit or County, for which he was elected or appointed." (Sec. 1556 of the Code.)

"Notice of removal of any officer, other than justices of the peace or constables, from the State, or from the district, Circuit or County, for which he was elected or appointed, must be given by and to the same officers as notice of his death is required (Sec. 1561) by this article to be given." (Sec. 1566 of the Code.)

Pertinent, therefore, to the question of Mr. Crum's status, is the enquiry of whether or not he has ceased to be a *resident of Lowndes County*. If, when he went to Conecuh County, he had the intention of returning to Lowndes County and still has that intention, his *residence* is still in Lowndes, for he has not permanently abandoned or changed his domicile. As a matter of fact and as indicating his intention, it may be asked where did he pay his poll tax, due October 1st, 1908, and delinquent Feb. 1st, 1909? If he was informed of the provisions under section 1566 of the Code, did he notify the Judge of Probate of Lowndes of his removal to Conecuh so that such officer might report his removal to the Governor?

"A domicile once acquired is presumed to continue until a change, *facto et animo*, is shown. It is presumed to continue until another is acquired by actual residence *with the intention of abandoning the former one*. And the burden of proof lies on the party who asserts the change."

Caldwell v. Pollok, 91 Ala. 357.

The foregoing discussion of the question in its general aspects should be ample to afford Mr. Crum the information requested and to guide you in the premises.

I return herewith Mr. Crum's letter enclosed to me. I beg to remain,

Yours very truly,
ALEX. M. GARBER,
Attorney General.

CONVICTS—DUTY OF BOARD OF INSPECTORS TO ASCERTAIN WHAT CONVICTS ARE SUFFERING FROM TUBERCULOSIS, AND TO REMOVE THEM TO SEPARATE CAMPS.

March 5th, 1909.

Hon. J. Craig Smith,
President, Board of Convict Inspectors,
Montgomery, Alabama.

Dear Sir:—

I have before me the letter of Judge P. H. Pitts to you, dated March 4th, which you have submitted to me for an opinion on the question referred to therein.

It is very clear that under sections 6534 and 6535 of the Code the duty is imposed upon the inspections of convicts to establish a separate camp or place for all State and County convicts suffering from tuberculosis. The former section provides that all such convicts shall be sent to the separate camp or place so established, and kept at such labor as they may be able to perform under the superintendence of said Board of Inspectors.

It is the duty of the Board of Inspectors, under the latter section;

First, to prescribe such rules and regulations as may be necessary to ascertain what convicts are suffering from tuberculosis;

Second, to prescribe such rules and regulations as may be necessary to provide for the removal of the same to the camp or place provided for such patients.

In ordering a County convict, ascertained to be suffering from tuberculosis, to be sent to the tuberculosis camp, it is my opinion that the language employed in the sections named confers upon your Board the authority to prescribe such rules as may be necessary for the removal of the convict.

I herewith return the letter of Judge Pitts.

I remain,

Yours very truly,
ALEX. M. GARBER,
Attorney General.

**RECORD MORTGAGE TAX—PROBATE JUDGE NOT REQUIRED
TO COLLECT IT ON INSTRUMENTS THAT ARE
CLEARLY DEEDS CONVEYING THE TITLE
TO PROPERTY.**

March 9, 1909.

Hon. H. Y. Brooke,
Assistant Examiner of Public Accounts,
Anniston, Alabama.

Dear Sir:—

I have received your letter of January 7th enclosing a sample of a deed used in Calhoun County and upon which, when offered for record, the Judge of Probate does not collect the record mortgage tax. The deed under discussion, in addition to the cash consideration expressed in said instrument, recites a further consideration "of ----- promissory notes executed by the said party of the second part, bearing even date with this instrument and due and payable as follows, etc." Then follows a description of the notes with the date of maturity of each.

In reply to your inquiry as to whether a deed of this character is subject to the record mortgage tax required under sub-division 7 of paragraph (c) of Section 2082 of the Political Code, it is my judgment that an instrument of this character does not fall within the terms of this statute. It is not a mortgage, a deed of trust or a contract of conditional sale, or "other instrument in the nature of a mortgage." The instrument effectuates a conveyance of the title to the property, and the vendor's lien which arises as an incident of the transaction, does not spring from the deed, but is a lien which attaches under the law for the balance of the purchase money. Neither the instrument itself nor the recitations or conditions thereof secure any indebtedness. The amount of the deferred payments, representing the balance of the purchase money, is an indebtedness secured by the vendor's lien arising out of the law and not from the deed, and is subject to the tax imposed on solvent credits.

I understand that the Probate Judge has required the holder of the notes, such as are described in a deed of this kind,

to pay the record tax when they are presented for record. I am of the opinion that this practice of the Judge of Probate is contrary to law. I am enclosing a copy of an opinion on this subject delivered to the State Auditor on June 15th, 1907, and suggest that you submit it to the Judge of Probate for his consideration.

I remain,

Yours very truly,
ALEX. M. GARBET,
Attorney General.

**BOARDS OF REGISTRARS—REQUIRED TO OPEN BOOKS FOR
REGISTRATION ON FRIDAYS PRECEDING
GENERAL ELECTIONS.**

March 12th, 1909.

Hon. R. G. Hewitt, Chairman,
Board of Registrars,
Birmingham, Alabama.

Dear Sir:—

I am in receipt of your letter of March 10th, containing the request of the registrars of Jefferson County to be advised "if the law provides for special registration before an election other than a general or municipal election."

I think section 308 of the Political Code referred to in your letter is superseded, or at least amended, by section 6 of the Act "To further regulate elections in the State of Alabama," General Acts, special session, 1907, p. 70. This section provides that "on Friday and Saturday next preceding the day of each primary, special, general or municipal election, held under the general municipal laws of this State, the registrars shall sit in the courthouse of each County, during such days," etc.

It appears that the Legislature has manifested in section 6 a purpose to afford a *certain class* of persons an opportunity to register on Friday and Saturday next preceding the day of *each special election*. To the accomplishment of this end, I think that the statute should be liberally construed, keeping

in mind, however, that only certain applicants described and designated in the latter part of section 6 may be registered at the special meetings of the Board so provided.

I remain,

Yours very truly,
ALEX. M. GARBER,
Attorney General.

INSURANCE COMPANIES—MUNICIPAL BONDS NOT ORDINARILY SUFFICIENT SECURITY UNDER SECTION 4559 OF THE CODE.

March 27th, 1909.

Hon. Frank N. Julian,
Insurance Commissioner,
Capitol.

Dear Sir:—

I have your communication of March 26th referring to the application of the Empire Life Insurance Company, of Atlanta, Georgia, to do business in this State, and the contention of said company that the securities making up its deposit with the Treasurer of the State of Georgia comply with the requirements of section 4559 of the Code of 1907. You desire to be advised if the securities so offered, consisting as they do, in part of the bonds of certain cities and towns of the State of Georgia, are of such character as should be accepted by your Department as a compliance with said section 4559, in view of the validation of such securities under the laws of the State of Georgia.

I have given careful consideration to the question thus presented in your letter, and it is my judgment that upon a technical construction of the language employed in section 4559 of the Code, the portion of the securities comprising the deposit of said company with the State Treasurer of Georgia, which consists of bonds of certain cities and towns of the State of Georgia, does not constitute a strict compliance with the terms of this statute. In view, however, of the law in force in Georgia, (Acts of Ga., 1897, p. 82), which provides for the confirming and validating of all municipal bonds, aft-

er which validation the validity of such bonds cannot be called in question in any court in the State of Georgia, I think the bonds of the cities referred to above stand upon a higher plane than ordinary municipal bonds.

The statute under consideration (Section 4559) requires the insurance company to satisfy the Insurance Commissioner that "it has on deposit with the Treasurer of the State, or with the proper officer of some other State, securities to the actual cash value of at least \$100,000.00." The object of the statute is to require a good and safe deposit in securities of the value of \$100,000.00. It is also clear that the primary purpose of the statute deals with the adequacy and sufficiency of the securities deposited, and to that extent it is certainly mandatory. The statute refers further to the securities to be deposited, and it would appear that the Legislature had in mind also the class and character of the securities required when using the words, "consisting of bonds of this State, the United States, or the State in which such company is organized, or notes or bonds secured by mortgages on real estate for double the amount." It is contended that this portion of the statute is merely directory, and that the statute is fully complied with when the insurance company has satisfied you that it has securities on deposit to the actual cash value of at least \$100,000.00, which are of an unquestionable and incontestable character. Practically speaking, this may be true, and to that extent meets the general purpose of the statute, and in a case of this character where the securities offered are largely composed of bonds of cities which have been validated, and thereby become incontestable under a State law, I cannot see that any harm from a material or practical standpoint would result in the admission of the insurance company to transact business in Alabama; provided, first, you admit the said company upon the distinct understanding that you reserve the right to apply a strict construction to this statute at any time, if in your judgment, it should become necessary in the future, and in that event the securities of the company would have to be changed to comply with the strict letter of the statute, and, Provided, second, that before admitting the said company to do business under the terms and conditions named above, your Department require the company to submit to an examination to be conducted by

you, or under your direction, the result of which examination must show such a healthy and solvent condition of management and finances of the company as to leave no doubt that the securities on file are unquestionably ample to protect all the policyholders in the State of Alabama.

Reference is here made to my opinion on this question, dated May 13th, 1908, which adopted a strict construction of the terms of the statute. This opinion does not abrogate my former ruling on this point, but is in harmony therewith.

I remain,

Yours very truly,
ALEX. M. GARBER,
Attorney General.

**FOREIGN CORPORATIONS—THE LOANING OF MONEY BY
FOREIGN CORPORATIONS IN THIS STATE CON-
STITUTES DOING BUSINESS UNDER ALA-
BAMA STATUTE.**

April 17th, 1909.

Hon. Frank N. Julian,
Secretary of State,
Capitol.

Dear Sir:—

You forwarded to me on the 6th instant a letter from Mr. Rhodes E. Cave, an attorney at law of St. Louis, Mo., in which you are requested to advise Mr. Cave whether the loaning of money by a foreign corporation to parties resident in Alabama, which loans are secured on mortgages on saw mills in this State, constitutes the doing of business in this State within the meaning of our Constitution and laws regulating the doing of business in this State by a foreign corporation.

It is my opinion, and I so advise you, that the facts mentioned constitute the doing of business in this State by foreign corporations within the meaning of our constitution and laws. See *State v. Bristol Savings Bank*, 108 Ala. 3.

I herewith return Mr. Cave's letter.

Yours very truly,
ALEX. M. GARBER,
Attorney General.

**MORTGAGE TAX—PAYABLE ONLY ON THE AMOUNT OF
THE INDEBTEDNESS AT THE TIME THE TAX IS
IMPOSED—WHEN INTEREST EXCLUDED.**

April 23, 1909.

Hon. John Purifoy,
Examiner of Public Accounts,
Tuscaloosa, Alabama.

Dear Sir:—

I am in receipt of your letter of April 20th, in which you make the following inquiry: "Foster executes a mortgage to Hanley, showing the principal to be \$7,000.00. Three notes for \$560.00 each, making a total of \$1,680.00 additional, shown to be for interest on the principal." And you desire to be advised as to whether the principal amount only is taxable under the provision of law exacting a tax on mortgages, or whether the mortgage tax should be paid on the entire debt secured, including the amount of the interest notes.

I have held that the mortgage tax is only collectable on the amount of the indebtedness at the time the tax is imposed. This construction excludes the interest, unless the interest is merged in the indebtedness expressed in the mortgage so that it is impossible to ascertain from the instrument what part of it is original indebtedness and what part of it is interest, in which case the tax should be required on the whole amount of indebtedness expressed on the face of the paper. My predecessor, Hon. Massey Wilson, held the same views, expressed by him in an opinion to Hon. Thos. L. Sowell, State Auditor, dated December 8th, 1903.

I remain,

Very truly yours,
ALEX. M. GARBER,
Attorney General.

**MORTGAGE TAX—PARAGRAPH 7 OF SECTION 2082 OF CODE
TOOK EFFECT IMMEDIATELY AFTER
ITS APPROVAL.**

April 26th, 1909.

Hon. W. W. Brandon,
State Auditor.
Capitol.

Dear Sir:—

I acknowledge your communication enclosing a letter from Hon. Jas. C. Brown, Judge of Probate of Tuscaloosa County. Judge Brown Propounds in his letter the following questions:

(No. 1.) If a mortgage for \$1,000.00 is filed for record and \$1.50 tax is paid, and then the same identical mortgage is filed a week later with "additional names signed as sureties," would the law require the tax to be collected again?

(No. 2.) If a mortgage on record, the tax having been paid when filed, is extended through the filing of a new written instrument stating that it is an extension of the mortgage on record, and also changing the rate of interest, would this written instrument showing the extension, etc., be subject to another tax?

(No. 3.) If parties should endorse notes at bank, or should go on the bond of a party, and should have said parties give them a mortgage securing them by reason of their endorsing, etc., would such a mortgage be liable to the tax?

(No. 4.) How long after the passage of the law by the last Legislature, requiring taxes to be paid on conditional sales, or on contracts in which title to property was retained, did said law go into effect?

These inquiries in their present form present abstract questions. I am not able to advise you definitely on the points raised, or to render you an opinion which you could safely follow, unless I had in each instance a concrete case before me. This applies especially to questions numbers 1 and 3.

It would appear that question number 2 is settled by subdivision h of paragraph 7 of section 2082 of the Code, which reads as follows: "Any renewal or extension of the time for payment of the indebtedness secured by any such instrument shall be governed in all respects by the provisions of this section."

If you will request Judge Brown to send you a copy of the instrument referred to under each of the above questions, so that I may have directly before me a concrete case, I will be pleased to advise you further and more definitely in the premises.

In reference to question number 4 relating to conditional sales, the Act "To further amend the Revenue Laws of the State of Alabama," approved March 7, 1907, section 1 of which is codified in paragraph 7 of section 2082 of the Code, by the terms of section 24 of said act, took effect from and after its passage and approval.

I remain,

Very truly yours,
ALEX. M. GARBER,
Attorney General.

**FARMERS INSTITUTES—EXPENSES OF HOLDING MAY BE
PAID UNDER ACT OF AUG. 9, 1907, UPON APPROVAL
BY THE GOVERNOR.**

April 29th, 1909.

Hon. J. A. Wilkinson,
Commissioner of Agriculture and Industries,
Capitol.

Dear Sir:—

I have your favor of the 21st instant in which you desire to be advised whether expenses of farmers' institutes can be paid under sections 73 and 74 of the Code.

In reply I beg to advise you that the Act of Aug. 9, 1907, (Gen. Acts 1907, p. 751) which Act was codified into the Code of 1907 as the aforesaid section numbers 73 and 74,

provides an appropriation of \$4,000.00 to be paid on the approval of the Governor for the purpose therein named, including the holding the farmers' institutes; and this appropriation is in addition to the appropriation provided by section 52 of the Code.

Yours very truly,
ALEX. M. GARBER,
Attorney General.

NAMES OF CORPORATIONS—WHAT AMOUNTS TO A SUBSTANTIAL DIFFERENCE IN THE NAMES OF CORPORATIONS.

May 10th, 1909.

Hon. Frank N. Julian,
Secretary of State,
Capitol.

Dear Sir:—

On the 9th of February, 1909, you wrote me relative to the report of the incorporation of the Standard Fuel Co.

I beg to say that there is a substantial difference between the name of this corporation and the name "Standard Fuel & Iron Company," a corporation heretofore in existence, and the name of Standard Fuel Company is not, in my opinion, so nearly similar to the name Standard Fuel & Iron Company as to lead to confusion and uncertainty within the meaning of subdivision 1 of section 3446 of the Code of Alabama of 1907.

Yours very truly,
ALEX. M. GARBER,
Attorney General.

FOREIGN CORPORATIONS—PERMIT TO DO BUSINESS IN
THIS STATE MAY BE ISSUED SO LONG AS IT IS AU-
THORIZED BY ITS CHARTER TO DO ANY
BUSINESS NOT PROHIBITED BY LAW,
UNDER SEC. 3651, ET SEQ., OF
THE CODE.

May 7th, 1909.

Hon. Frank N. Julian,
Secretary of State,
Capitol.

Dear Sir:—

On January 29th, 1909, you forwarded to me a letter from the Christian Moerlein Brewing Company, a corporation organized under the laws of Ohio, and requested me to advise you upon the questions raised in the letter of that company to you, which bears the date of January 25th, 1909.

I beg to say in reply to your letter that if the articles of incorporation of this company merely permit the corporation to engage in the manufacture and sale of pure lager beer, you would not be authorized to issue the permit to do business in State, in accordance with the provisions of section 3651 et seq., of the Code of 1907.

If this corporation merely desires to institute suits in the courts of this State, and to enforce its obligations now outstanding and to protect its properties in this State it may do so without obtaining the aforesaid permit; for the acts mentioned do not constitute the doing of business in this State within the meaning of our constitution and laws.

It may be that this corporation has other powers in its charter than the power mentioned first above; and, in that event, you will be authorized to issue the permit so long as the charter discloses the right of the company to engage in a business which is not prohibited by the laws of this State.

I am herewith returning the letter of the Christian Moerlein Company to you, which is referred to above, and which forms the basis of this opinion.

Yours very truly,
ALEX. M. GARBER,
Attorney General.

**FOREIGN CORPORATIONS—WHAT CONSTITUTES DOING
BUSINESS IN THIS STATE.**

May 10th, 1909.

Hon. Frank N. Julian,
Secretary of State,
Capitol.

Dear Sir:—

On February 22nd, 1909, you forwarded to me a letter addressed to you from Mr. Jesse Arthur, an attorney at law, in the matter of the Toasted Corn Flake Co.

It appears that this corporation is organized under the laws of a State other than Alabama, and Mr. Arthur desires to know whether the facts mentioned in his letter constitute the doing of business within this State within the meaning of our Constitution and Laws.

The facts, briefly stated, are that the company will, from time to time, have in this State advertising material and toasted corn flakes stored in warehouses for the convenience of delivery to Alabama jobbers. It is not stated by Mr. Arthur whether the goods mentioned are *sold before shipment* to the warehouses in Alabama for distribution; or whether after the receipt of such orders the same are filled by and from the stock of goods so stored in the warehouses in this State. If the former is true, the company is not doing business within this State within the meaning of our Constitution and Laws, but if the latter is true, viz: That upon receipt of orders by the company the same are filled from the stock of goods so stored in Alabama warehouses, the company is doing business within this State within the meaning of our Constitution and Laws. See *General Oil Company v. Crain*, 209 U. S. 210, which case is decisive of this point.

I am returning herewith the letter addressed to you by Mr. Arthur.

Yours very truly,
ALEX. M. GARBER,
Attorney General.

**BOND OF TAX COLLECTOR—GUARANTEE COMPANY'S
CONTRACT WITH SURETIES WILL NOT AFFECT
THE BOND GIVEN IN FAVOR OF THE STATE.**

May 25th, 1909.

Hon. Walter D. Seed,
State Treasurer,
Capitol.

Dear Sir:—

Sometime ago you requested me to advise you upon the following facts:

“The Guarantee Trust & Surety Company of Birmingham, Alabama, indemnify the sureties of the Tax Collector's bond of R. O. Sibley. The State provides for liability to the bond of a Tax Collector for a period of five years after the expiration of his term of office. This indemnity bond to these sureties specifically states that the liability on same shall not cover a period longer than one year.

“What I wish to know is, can the Guarantee Company limit the statutory liability that they necessarily assume when they agree to indemnify the bondsmen of this Tax Collector? If after five years, an examination should disclose a shortage on the part of the Tax Collector, would the sureties have any recourse on the Guarantee Company in the face of the stipulated provision that their liability shall only extend for a period of twelve months?

“This Company is desirous of withdrawing its securities from the Treasury and it is necessary for me to know the exact amount of their liability and they have two cases of this character.”

The Guarantee Company limited its liability in his contract with the sureties of Tax Collector Sibley, to a period of one year, that contract will control the rights of those parties regardless of the statute which controls the liability of the sureties to the State. In other words, the State is not prejudiced by the contract the sureties may make with the Guarantee

Company, and whatever contract they make is entirely independent of the State. If you have correctly stated the contract between the sureties and the Guarantee Company, the company may withdraw its securities from the State Treasury after the expiration of the time mentioned in the contract between these parties.

Yours very truly,
ALEX. M. GARBER,
Attorney General.

**APPEARANCE BONDS IN CRIMINAL CASES—A BONDING
COMPANY WRITING ONLY THIS CLASS OF BONDS
MUST COMPLY WITH THE STATUTES HAVING
REFERENCE TO BONDING COMPANIES.**

May 26th, 1909.

Hon. Frank N. Julian,
Secretary of State,
Capitol.

Dear Sir:—

You recently handed to me a brief of Mr. J. H. McNeal, attorney for the Jefferson Bonding Company, on the question of the right of the company to execute Appearance Bonds in criminal cases; and I am in receipt of a letter addressed to me directly by Mr. McNeal in which he encloses additional brief on this subject.

The right of the company to act as such surety was questioned by Judge Feagin, Recorder of the Police Court of the City of Birmingham, on account of the fact that the Jefferson Bonding Company had not complied with the provisions of section 1507, et seq. of the Code of Alabama, in respect to the amount of authorized capital and the deposits and other duties required by the aforesaid sections.

Upon investigating the matter it is my opinion, and I so advise you that this class of bonds comes within the provisions of section 1507 of the Code, and unless the company has complied with the statutes in such cases made and pro-

vided, the bond is not such an undertaking as is declared to be sufficient by section 1507 of the Code.

I am returning all of the papers forwarded to me in connection with this matter.

Very truly yours,
ALEX. M. GARBER,
Attorney General.

**FEED BILLS—UNLESS HELD UNDER MITTIMUS SHERIFF
HAS NO RIGHT TO CHARGE FEED BILL FOR
PRISONERS ARRESTED ON WARRANT
BY JUSTICE OF THE PEACE.**

May 28th, 1909.

Hon. John Purifoy,
Examiner of Public Accounts,
Tuscaloosa, Alabama.

Dear Sir:—

Sometime ago you requested me to advise you whether a warrant of arrest issued by a Justice of the Peace was sufficient authority for the Sheriff to detain a prisoner, and to charge the State for the feed bill incurred for each day such prisoner is held.

It is my opinion, and I so advise you, that the Sheriff is not authorized to charge the State with such feed bill unless the prisoner is held in custody under authority of a mittimus issued by the Justice of the Peace.

Yours very truly,
ALEX. M. GARBER,
Attorney General.

**INSURANCE COMPANY—NOT EXCLUSIVELY ENGAGED IN
THE BUSINESS OF LOANING MONEY NOT REQUIRED
TO PAY LICENSE UNDER ACT OF
NOV. 30, 1907.**

May 28th, 1909.

Hon. W. W. Brandon,
State Auditor,
Capitol.

Dear Sir:—

On the 22nd instant you referred to me the accompanying letters of Messrs. Tillman, Grubb, Bradley & Morrow, relative to the liability of the Prudential Insurance Company, for the payment of a license fee of \$25.00 in order for it to properly qualify for the business of lending money in Alabama.

The Acts of November 30th, 1907, (Special Acts 1907, p. 200) provides that: "All corporations or mutual companies which have no capital stock, *and all corporations which shall engage in this State solely in the business of lending money, shall pay a fee of \$25.00.*"

If the Prudential Company is engaged solely in the business of lending money, this fee must be paid; but if it is engaged in the business of insurance as well as the business of lending money, it is not required to pay this license fee.

Yours very truly,

ALEX. M. GARBER,
Attorney General.

**SALE OF SCHOOL LANDS—THE ADOPTION OF THE CODE
DOES NOT AFFECT SALE OF LANDS COMPLETED
BEFORE CODE WENT INTO EFFECT.**

June 5th, 1909.

Hon. Harry C. Gunnels,
Superintendent of Education,
Capitol.

Dear Sir:—

I have your communication of the 4th instant in which you state the following facts:

"On the 3rd day of March, 1908, the township trustees of township three, range two, west, Madison County, sold to Mr. Lawson A. Wall certain sixteenth section lands in said township and range. The sale was made for cash and New York Exchange in favor of the State Treasurer was sent to this office. In reading the report of the sale it occurred to me that there were some irregularities which should be corrected before the check was turned into the State Treasury. I therefore held the same. Before I was convinced that there were no irregularities in the same the new Code came into effect which provides that the Superintendent of Education of the State, with the approval of the Governor, section 1783, shall sell sixteenth section lands. A few days ago I deposited the check for collection and the amount is to my credit in the First National Bank at present."

The provisions of the Code of 1896 with regard to school lands and the sale thereof, are contained in sections 3635 to 3644, inclusive. Section 3645 of the Code of 1896 provides the manner and method which the township trustees make a report of a sale of school lands and the disposition of purchase money. Section 3647 of this Code provides that such trustees on receiving payment for the land sold, shall issue to the purchaser a certificate of purchase; and section 3652 provides that a patent shall issue upon the payment of such purchase money.

Under the provisions of the Code of 1896 I can find nowhere any duty imposed upon you, as Superintendent of Education, to confirm or approve the election prescribed by section 3635, or to confirm or approve the sale made under section 3643. I take it from your statement that the provisions of all of the above mentioned sections of the Code of 1896, including section 3645, were complied with prior to May 1st, 1908, the date when the new Code became effective. Under this statement of facts, it is my opinion that the sale of the land to Mr. Wall was a completed transaction and an executed contract within the meaning of the law prior to May 1st, 1908, and that the failure to issue a patent to him before such date did not have the effect to invalidate the sale of

such land to him. The provisions of section 1783 of the new Code would, therefore, have no application to this transaction, although a patent may not have been issued, and in fact had not been issued to Mr. Wall prior to May 1st, 1908.

I remain,

Very truly yours,
ALEX. M. GARBER,
Attorney General.

**TEACHERS' PAY ROLLS—REFUSAL OF SUPERINTENDENT
OF EDUCATION TO APPROVE CURRENT PAY ROLL
NOT AUTHORIZED WHEN EXAMINERS' REPORT
SHOWS SHORTAGE IN ACCOUNTS OF
COUNTY SUPERINTENDENT.**

June 10, 1909.

Hon. Harry C. Gunnels,
Superintendent of Education,
Capitol.

Dear Sir:—

You requested me on yesterday to advise you whether you should approve the monthly pay-roll of teachers in the public schools of Marengo County, which pay-roll was made out and submitted to you by Mr. S. W. Compton, County Superintendent of Education for Marengo County.

The question of whether you should approve this pay-roll for the month of May, 1909, arises from the fact that according to the report of Hon. H. Y. Brooke, assistant examiner of public accounts, filed in the Governor's office June 4th, 1909, it appears that Mr. Compton is short in his accounts and is due the State and the County of Marengo the total sum of \$8,718.31.

There is no provision of the law under which you can withhold your approval of this pay-roll on account of the supposed shortage of Mr. Compton. Mr. Compton is still in office and is still County Superintendent of Marengo County, and it is my opinion, and I so advise you, that you should approve this

pay-roll and the Auditor should issue his warrant as in other cases, and the Treasurer should pay the warrant when presented to him.

Yours very truly,
ALEX. M. GARBER,
Attorney General.

**BONDING COMPANY—MUST COMPLY WITH SECTION 1507 OF
CODE BEFORE THEY CAN BECOME SURETY ON
APPEARANCE BONDS IN CRIMINAL CASES.**

June 15, 1909.

Hon. Frank N. Julian,
Secretary of State,
Capitol.

Dear Sir:—

I received a letter under date of the 29th ultimo from Mr. J. H. Hawkins, President of the Jefferson Bonding Company, relative to my letter to you of the 25th ultimo. In view of the fact that the matter was referred to me through your office, I make answer direct to you.

Mr. Hawkins states that this company was organized solely for the purpose of filing appearance bonds in the Criminal Court of Jefferson County, and in the Inferior Criminal Court of the City of Birmingham, and further, to quote from his letter; "We were incorporated merely to be able to form a holding company for the real estate that is required for a bondsman to own in the county in which the bond is made. By a resolution of the board of directors the president and secretary were authorized to sign bonds and their signatures are binding upon all the stockholders of the company as though the property stood in the individual names of the president and secretary. Now as individuals the president and secretary could own this property and take out a license as 'Bond-makers' and under the laws of Alabama would be what the Code requires on an appearance bond 'Two sufficient sureties.'"

When this corporation was organized and became the owner of real estate no other person had or held any interest in that

real estate. The corporation stood in the attitude of any individual who might become the owner of the property by transfer from these incorporators.

The first section mentioned, 6342 of the Code provides that the undertaking of the bail must be in writing, signed by the defendant, "and at least two sufficient sureties, and approved by the magistrate or officer taking the same." Section 6343, provides, that "the qualifications of bail are that each must be a resident of this State, and a householder and freeholder therein, and that each must be worth, exclusive of property exempt from execution, the amount expressed in the undertaking."

The section last quoted unquestionably refers to and requires that the surety shall be a person, and excludes the idea of that surety being a corporation. Therefore, the only right and power of a corporation to become the surety on a bond of this kind must arise from section 1507 of the Code. It is here provided that "when any person or corporation is required or permitted to *execute any bond or other undertaking, of whatsoever nature*, with surety or sureties, in any judicial proceeding, * * * the court officer or person having authority, or charged with the duty of approving such bond or undertaking, may, if such bond or undertaking is otherwise sufficient, approve the same when executed by a corporation having the power or authority under its charter to become surety on such bond or undertaking, as surety, *and having complied with the provisions of this article*; and the execution by *any such corporation*, as surety, of any such bond or undertaking shall be in all respects, upon the approval and acceptance of such bond, a full and complete compliance with the requirements of any law, ordinance, rule, or regulation requiring such bond or undertaking shall be executed by one surety, or by one or more sureties, or that such surety or sureties shall be residents of the State, or any county therein, or shall be householders or freeholders, or either or both, or shall possess any other qualification."

I am at a loss to understand upon what authority Mr. Hawkins can claim for his corporation the benefit of sec. 1507 of the Code without complying therewith. In distinct and positive terms it is there provided that when the corporation has complied with the provisions of the article, of which that section is a part, it may execute the bond, and the officer to

whom it is tendered must approve the same. The corporation cannot obtain the benefits of this section without submitting to its requirements. Indeed, it may be well doubted whether the officer to whom the bond is tendered should approve the same unless executed by two individuals who meet the qualifications of section 6343 of the Code, and I have serious doubt of whether the corporation, regardless of the amount of property it may own, may qualify as a surety under the language of section 6343 of the Code, until it complies with section 1507.

I suggest that you send a copy of this letter to Mr. Hawkins for his information.

Yours very truly,
ALEX. M. GARBER,
Attorney General.

**CANCELLATION OF PERMIT OF INSURANCE CO.—CANCELLATION NOT AUTHORIZED WHERE PERMIT ISSUED
SUBSEQUENT TO REMOVAL OF CASE TO
FEDERAL COURT.**

June 29, 1909.

Hon. Frank N. Julian,
Secretary of State,
Capitol.

Dear Sir:—

Your letter of June 22nd containing the following inquiry is acknowledged: "I desire to ask your official opinion if upon the statement of facts as presented by Mr. Chappelle, I, as Secretary of State, would have the power and authority to revoke the cancellation of the permit issued said company for the year 1909, and restore the said company's authority to transact business in this State for the year 1909."

The verified statement of facts signed by Mr. Jas. Chappelle, Secretary of the Great Western Life Ins. Co., as amended, contains the following statement:

"At the time of the filing of the petition for removal and the consequent removal of said case to the Federal Court the company had no permit as required by the Act of March 4th, 1907, page 230, now constituting sections 3654 and 3651 of the Code, but did subsequently obtain a permit on, to-wit, September 12th, 1908."

An examination of the stubs of the Corporation Permit Book for the year 1908, kept in your office, shows that there was no permit issued to the Great Western Life Ins. Company for the year 1908, until, to-wit, September 12th, 1908. This is conclusive proof of the correctness of the above statement quoted from the affidavit of Mr. Chappelle. It appears, therefore, that on, to-wit the 14th day of August 1908, the date of the removal of the case under discussion, from a State Court to a Federal Court, by the Great Western Life Ins. Co., the said Life Insurance Company had not received from you as Secretary of State, as prescribed by section 3651 of the Code, a permit admitting it to do business in the State of Alabama as a foreign corporation. There are some other facts presented in the papers before me which do not require discussion in replying to your inquiry. It is shown that the Clerk of the State Court did not certify the fact of removal of the case as aforesaid, to you as Secretary of State, until, to-wit, the 23rd of June 1909, something over ten months after the date of such removal on, to-wit, August 14th, 1908.

It was the duty of the Clerk of a State Court under the provisions of section 3654 of the Code, "to *forthwith* certify a copy of said petition (of removal) * * * to the Secretary of State, who shall thereupon immediately cancel *the permit issued to such corporation.*" Had the Clerk complied with the provisions of this statute there would have been no permit issued by you subject to cancellation, as the permit for 1908 issued to the Great Western Life Ins. Co., as a foreign corporation was not granted until, to-wit, September 12th, 1908. The further provision of section 3654 of the Code shows that the foreign corporations referred to therein are such as are "*doing business* in this State, and *having obtained a permit* as required by law."

Under the situation of the case as disclosed by the facts mentioned above, it is my opinion that you are authorized to

revoke your action of several days ago in cancelling the permit issued to this company for the year 1909. It will thus follow that the company will be restored to the same position it occupied with respect to the laws of the State of Alabama as it did prior to the cancellation of such permit.

I remain,

Very truly yours,
ALEX. M. GARBER,
Attorney General.

NOTICE OF SALE—SEPARATE DESCRIPTIONS AND ADVERTISEMENTS NOT NECESSARY UNDER SECTION 2279 OF CODE.

July 19, 1909.

Hon. W. W. Brandon,
State Auditor,
Capitol.

Dear Sir:—

I am in receipt of your letter of the 12th instant enclosing account from the Abbeville Times for publishing notices of tax sale, and also a letter from the publisher of that paper. You desire to be advised as to whether this account should be paid as rendered.

Section 2287 of the Code imposes upon you the duty of auditing the account of the proprietor of the newspaper in which such notices were published and of drawing your warrant on the State Treasurer in favor of such proprietor for the amount you may find to be lawfully due him and payable by the State.

It is not provided in section 2279 of the Code, under which the publication was made, the exact form of description which should be used when lands are sold for the delinquent taxes, fees and costs of more than one year. It appears from the account submitted and the letter of Mr. J. R. Espy, publisher of the Abbeville Times, that certain lands, which were sold and bid in by the State for the delinquent taxes for the years 1907 and 1908 were given by the Probate Judge and Tax Col-

lector to the publisher under separate descriptions and were thus published by the Abbeville Times.

Under the existing circumstances of this case, as it appears from the papers before me and from further information received from your Department, it is my opinion that you are justified in this particular instance in paying the account as rendered by the Abbeville Times. I do not think, however, that separate descriptions and advertisements are necessary under section 2279 when land is sold for delinquent taxes of two or more years. It is an unnecessary expense and I suggest that you give directions to the County Officials to include in the publications only one description in such cases, giving the taxes, costs and fees due for each year.

I am returning to you the papers enclosed to me about this matter.

Yours very truly,
ALEX. M. GARBER,
Attorney General.

**COUNTY COMMISSIONERS—NO AUTHORITY TO CHARGE
FOR SERVICES OTHER THAN THOSE RENDERED
AT MEETINGS OF THE COMMISSIONERS' COURT.**

July 24, 1909.

Hon. H. F. Lee,
Assistant Examiner of Public Accounts,
Capitol.

Dear Sir:—

I am requested by you to advise you whether the County Commissioners may charge and collect from the county for services performed for the county other than at the meetings of the Commissioners' Court; the services in question being performed in various parts of the county, and consisting of inspecting and supervising the building and repairing of bridges and roads in Wilcox County, for which services the individual commissioners rendered bills against the county for per diem and mileage, which were paid by the County Treasurer.

Section 3322 of the Code provides that,

"Each member of the courts of county commissioners and boards of revenue in each of the several counties of the State of Alabama shall be paid out of the county treasury of their respective counties for their services the sum of three dollars per day while occupied in the discharge of their duties as such members of the court of county commissioners or board of revenue, and five cents per day in going to and returning from their respective courts, said sums to be paid on warrants drawn on the county treasury on the order of the court of county commissioners or board of revenue."

This section of the Code is codified from the Act approved October 1st, 1903, (Gen. Acts 1903, p. 373) which act went into effect January 1st, 1904. It will be observed that compensation is by this section allowed to each member of the *court* "for their services the sum of three dollars per day while occupied in the discharge of their duties as such members of the *court* of county commissioners or board of revenue, and five cents per mile in going to and returning from their respective *courts*." And it is only while occupied in the discharge of the duties as a member of the *court* that the commissioner is entitled to the per diem and mileage. Inspecting and supervising the building and repairing of bridges and roads and other duties and work of this nature, which is done by the commissioners individually, is not that class of service for which this section of the Code is intended to give compensation. The commissioner is not engaged in the discharge of his duty as a member of a *court* when he individually performs the class of duties to which I have referred. You will observe that this section allows a certain mileage for going to and returning "from their respective *courts*." This language indicates clearly that it was only the intention of the Legislature to give this compensation when the commissioners are going to the county seat to attend the meeting of the *court* and in returning therefrom.

However meritorious the claim may be for service rendered by a commissioner other than at a meeting of the court, the statute does not allow it.

Section 967 of the Code of 1896, which was in effect prior to January 1st, 1904, must be given the same construction as the aforesaid section 3322 of the Code of 1907.

Yours very truly,
ALEX. M. GARBER,
Attorney General.

**COUNTY TREASURER—NO AUTHORITY TO CHARGE FOR
REPORT FILED WITH COUNTY COMMISSIONERS.**

June 30, 1909.

Hon. H. F. Lee,
Assistant Examiner of Public Accounts,
Capitol.

Dear Sir:—

On June 16th, 1909, you requested me to advise you whether "it is a legal charge for the County Treasurer (of Wilcox County) to charge for the report filed with the Court of County Commissioners of the receipts and disbursements of the county funds," and you state that you "find where the County Treasurer (of Wilcox County) charges the county for making a semi-annual report of the receipts and disbursements of the county funds that is required to be published, he having received \$1,000.00 commissions."

Section 211 of the Code provides that it shall be the duty of the County Treasurer "to receive and keep the money of the county, and disburse the same according to law." And he is required by subdivision 9 of this section "to keep a correct account of the receipts and disbursements of all moneys received by him for the county according to the forms therein prescribed," etc. And by subdivisions 11 and 12 of this section, "to submit to the Court of County Commissioners at the first term in each year, the register of claims; his account for the year balanced; vouchers for the payments; * * *

12. To make report, and give information to the Court of County Commissioners, when required, respecting all matters relating to the finances of the County."

Section 3317 of the Code provides, that "it shall be the duty of the Court of County Commissioners to make semi-annual publications, on the first days of January and July of each year, showing the receipts and expenditures of money for the County, specifying particularly the sources from which received, and the purposes for which expended."

The compensation of the County Treasurer is fixed by section 217 of the Code on a percentage basis, in no case to exceed \$1,000.00 in any one year.

Under no possible construction of the Code sections above referred to can it be held that the Treasurer is entitled to extra compensation for submitting to the Court of County Commissioners at the first term in each year an account for the year as required by subdivision 11 of section 211. The statute is plain in imposing this duty upon the Treasurer.

With respect to the right of the Treasurer for compensation for a report which he may file at another time, and referred to in your letter as the "semi-annual" report, the rule for determining the right of public officers for compensation must be borne in mind, viz:

"Those who accept public offices which require them to render services to the State, must take the office *cum onere*,—the rendition of such services gratuitously, unless by express statutory provision, compensation is fixed, and an express liability for its payment imposed."

Yours very truly,
ALEX. M. GARBER,
Attorney General.

JUDGE OF COUNTY COURT—NOT ENTITLED TO FEE FOR
JUDGMENT AGAINST DEFAULTING JUROR.

July 24, 1909.

Hon. H. F. Lee,
Assistant Examiner of Public Accounts,
Capitol.

Dear Sir:—

On the 16th ultimo you requested me to advise you whether the County Judge of Wilcox County may charge and collect a fee out of the general fund of the county, for the trial of a defaulting juror or witness where the forfeiture taken against the juror or witness is set aside by the trial judge. Under the act approved February 23rd, 1881, (Acts 1880-81, p. 295) the trial of misdemeanors in the county court, by juries, was provided for. Section 17 of this Act provides, "that the fees of the Judge of said court shall be the same as is now, or may be hereafter, provided for the Judges of the County Courts of the State." Section 6656 of the Code of 1907, provides that "the Judge of the County Court shall receive *no other compensation* than the following fees which shall be paid out of the county treasury,—that is to say:

"For each judgment against a defaulting *witness*, or on forfeited undertaking of bail, \$2.00."

Section 6715 of the Code provides that "If witnesses, after being duly summoned, fail to appear and testify as commanded, a *conditional judgment* may be rendered against them. And in such cases the proceedings may, in all material respects, be made to conform to those given for forfeiture of bail bonds."

Section 6711 of the Code provides for the rendition of a judgment *nisi* against the defendant and his sureties if the defendant fails to appear as required by his bond. Section 6712 requires the County Judge to issue a *sci fa* on this conditional bond, and section 6713 provides for the rendition of a judgment final against the defendant and his sureties.

It is my opinion, and I so advise you, that the above quoted provision of section 6656 of the Code allowing the Judge of

the County Court a fee of \$2.00 for each judgment against a defaulting witness has reference only to the judgment final against such witness, and not to a conditional judgment which is set aside on the appearance of the witness in response to the *sci fa*.

There is no fee provided for the Judge of the County Court for a judgment against a defaulting *juror*, and that officer is, therefore, entitled to no fee even where the conditional judgment is made final against such defaulting juror.

Yours very truly,
ALEX. M. GARBER,
Attorney General.

JUDGE OF PROBATE AS HARD LABOR AGENT—NO AUTHORITY TO CHARGE 6 PER CENT. ON MONEYS HANDLED AS FEES.

June 30, 1909.

Hon. H. F. Lee,
Assistant Examiner of Public Accounts,
Capitol.

Dear Sir:—

On June 16th, 1909, you addressed to me a letter requesting me to advise you whether the Judge of Probate of Wilcox County, who heretofore acted as Hard Labor Agent for the County, under section 4523 of the Code of 1896, was entitled to recover from the County for his services as such agent, 6% on all moneys collected and paid to the State Treasurer.

The aforesaid section 4523 of the Code of 1896 is as follows:

“A record shall also be kept in the office of the board of inspectors, similar to that provided to be kept for state convicts, of all persons who are sentenced to hard labor for the county, and who, under the provisions of this article, may be confined to their supervision; and the Judge of Probate, or agent of hard labor for the county, shall report to the Board, at such times as the board may prescribe, the name, age, sex, and race of each person

sentenced to hard labor, date of conviction, crime, term of sentence, additional term of costs, date of expiration of sentence, and amount of costs; any judge of probate failing or neglecting to make, or to have made by the agent of hard labor for his county, the reports required by law, may be impeached as in other cases; and he and the sureties on his official bond shall be liable to any person for all damages sustained by reason of such failure."

There is no duty, under this section, imposed upon the Judge of Probate to collect moneys arising from convict labor, and I find no provision of law imposing that duty upon the Judge of Probate. In your letter to me you refer to section 4538 of the Code of 1896 as the authority for paying the Judge of Probate for the services in question. But this section is authority to the court of county commissioners to employ a Superintendent of Public Works whose duties are defined by section 4542 of the Code of 1896, in short, to superintend the employment of convicts. For this service this officer is entitled to receive such compensation as shall be fixed by the Court of County Commissioners or Board of Revenue. The several sections of the Code of 1896 which deal with this officer (Superintendent of Public Works) show clearly that the Judge of Probate cannot hold this office. Besides, even if it were consistent with his other duties for him to hold the office, he could not do so without violating section 280 of the Constitution, which prohibits any person from holding two offices of profit at one and the same time under this statute.

I might call your attention to the principle laid down in *Thoup v. Morgan County*, 109 Ala., 162, that "when any public officers demand a fee for services rendered he must point to some clear and definite provision of the statute, which authorizes him to make the charge or demand." On the whole, and after careful examination of the statutes, I find no provision of law which authorizes the Judge of Probate to receive the fee in question.

Yours very truly,
ALEX. M. GARBER,
Attorney General.

**CLERK OF COUNTY COURT OF WILCOX—NO AUTHORITY TO
CHARGE FOR KEEPING MINUTES OF THAT COURT
AND FOR ATTENDANCE.**

July 24, 1909.

Hon. H. F. Lee,
Assistant Examiner of Public Accounts,
Capitol.

Dear Sir:—

On the 16th ultimo you requested me to advise you whether the Clerk of the Circuit Court of Wilcox County may charge and collect \$2. 00 per day from the county for attendance and keeping the minutes of the County Court.

Section 7 of the Act of February 23rd, 1881, (Acts 1880-1 p. 296) provides that the Clerk of the Circuit Court of Wilcox County shall be ex officio Clerk of the County Court; and section 17 of this Act provides that "the fee of the Clerk of the said County Court shall be the same as is now, or as may hereafter be, allowed to the Clerks in the Circuit Courts." Section 3714 of the Code of 1907 provides that, "Clerks of the Circuit Courts in the counties where the ex officio fees of Clerks are limited to two hundred dollars or less, shall be allowed out of the County Treasury of the respective counties two dollars per day for the time the Circuit Court is in session in the county of which he is Clerk, for keeping the minutes of his said court." Under this section of the Code the Clerk of the Circuit Court of Wilcox County is entitled to the fee of two dollars per day while the Circuit Court is in session, for keeping the minutes of that court, provided his ex officio fees do not exceed \$200.00.

Section 3714 of the Code had its origin in the Act of February 18th, 1897, (Acts 1896-7, p. 1461) which was amended by the Act of December 11th, 1900, (Acts of 1900-1, p. 392) Both of these acts applied only to certain counties in the State entitling the Clerks of the Circuit Courts of such Counties to the compensation provided therein. In the case of *Reese v. Cleburne County*, 139 Ala., 299, it appeared that the Clerk of the Circuit Court was ex officio Clerk of the County Court, as in the present case, and that officer sought to obtain the

present fee, basing his right thereto upon the Acts mentioned. In the opinion of the Court Judge Tyson said: "These acts being special or limited in their operation to some of the counties and not including others, we entertain the opinion that their provisions cannot be extended so as to entitle the plaintiff to the compensation provided by them, even though it be conceded that the language in the act and the one amendatory thereof under which he performed the duties of his office, entitled him to compensation for ex officio services. The emoluments to which he is entitled are those allowed to the Clerks of the Circuit Courts by the general laws of the State." In no event was the Clerk of Wilcox Circuit Court entitled to the fee in question for services performed by him in the County Court prior to May 1st, 1908, when the present Code became operative.

In the case of *Reese v. Cleburne County*, supra, the court strongly intimates the opinion that the fee under consideration is an ex officio fee and that the language of the county court act involved in that case, was not sufficient to include compensation for ex officio services. The language of section 17 of the act of February 23rd, 1881 is not different in effect from that used in the Cleburne County Court Act. In the case of *Troup v. Morgan Co.*, 109 Ala. 162, the court held that a statute making provision for "fees" did not include compensation for ex officio services. And in view of this principle, and of the intimation of the court in the Cleburne County case that the present fee is compensation for ex officio services, I am forced to the conclusion that the Wilcox Circuit Clerk is not entitled to this fee for service rendered in the county court.

Yours very truly,
ALEX. M. GARBER,
Attorney General.

**FOREIGN CORPORATION—SELLING OF ITS OWN CAPITAL
STOCK DOES NOT CONSTITUTE DOING BUSINESS
IN THIS STATE.**

August 3, 1909.

Hon. Frank N. Julian,
Insurance Commissioner,
Capitol.

Dear Sir:—

On the 21st of July, 1909, you requested me to advise you whether the selling of the capitol stock of the Consolidated Casualty Company, in this State, through its agents, constituted the doing of business in Alabama within the meaning of our constitution and laws.

It appears from your letter and accompanying documents that the Consolidated Casualty Company was incorporated under the laws of West Virginia to conduct a casualty, health and accident insurance business. Without having filed a copy of its charter and appointed an agent in this State, as required by our constitution and laws, the company through its agents sold its capital stock in this State. You raised the question in your letter that this constituted a doing of business and that the "sale of stock is as much a part of the corporations business as is the selling or writing of insurance, because it is absolutely necessary for the corporation to sell its stock in order to place its business of insurance."

After carefully considering the question in the light of your suggestions, it is my conclusion and I so advise you that the selling of the capital stock of the company, in this State through its agents, did not constitute a doing of business in this State within the meaning of our constitution and laws. See *Beard v. Union Co.*, 71 Ala. 60; *State v. Anniston Rolling Mills*, 125 Ala. 121.

In the *Beard* case the court used this language: "There must be a doing of some of the works, or an exercise of some of the functions for which the corporation was created to bring the case within that clause (of the constitution)." And in the *Anniston Rolling Mills* case the court held the company

not liable for a license tax for doing business as a corporation where the only corporate acts done by it were the collection of rent, the payment of taxes, the lending of some of its money and collecting the interest thereon, and the meeting of its Board of Directors, and the doing of such other things as were incident to the preservation of its property; none of such acts being an exercise of the functions, powers or franchises for which the corporation was created to perform, and none of the acts being the transaction of the business which it was organized to transact.

In the present case the casualty company was organized to conduct an insurance business. By no sort of reasoning can it be said that the sale of its own capital stock was the exercise of a function for which the corporation was created. You refer in your letter to a clause embodied in paragraph VII of the charter which authorizes the corporation to purchase and sell shares of the capital stock of other corporations. This, however, has no bearing upon the present question. The company was not engaged in the business of either purchasing or selling shares of the capital stock of other corporations within the meaning of this provision of its charter. It was engaged in the selling of its own capital stock. The charter contained no reference to the power of the company in selling its own stock; indeed, there was no occasion for such power to be conferred. It was incident to the right of the corporation to exist.

I herewith return the documents enclosed with your letter.

I remain,

Yours very truly,
ALEX. M. GARBER,
Attorney General.

**BOARD OF REGISTRARS—REQUIRED TO HOLD SESSION
PRIOR TO THE ELECTION ON THE CONSTITUTIONAL
PROHIBITION AMENDMENT.**

Sept. 4th, 1908.

Hon. G. G. Griffin, Chairman,
Board of Registrars,
Demopolis, Alabama.

Dear Sir:—

I beg to acknowledge the receipt of your letter of the 2nd instant, requesting me to advise you as to the authority of the County Board of Registrars to sit on Friday and Saturday next preceding the election to be held upon the Constitutional prohibition Amendment on November 29th, 1909. I note that there is some doubt in your mind as to the authority of your Board to hold a session on the days mentioned above.

Section 190 of the Constitution of Alabama, and sections 333 et seq., of the Code of Alabama, prescribe provisions for the regulation and government of elections and fix the time of holding general elections.

Subdivision 5 of section 430 of the Political Code authorizes special elections to be held "in such other cases as are or may be provided for by law."

Section 284 of the Constitution prescribes the mode of amending the Constitution and directs "the Legislature to order an election by the qualified electors of the State upon such proposed amendments, to be held either at the general election next succeeding the session of the Legislature, at which the amendments are proposed, or upon another day appointed by the Legislature, not less than three months after the final adjournment of the session of the Legislature at which the amendments were proposed." It is also provided in this section of the Constitution and in the Code that notice of such election shall be given by proclamation of the Governor for at least eight successive weeks next preceding the day appointed for such election.

House Bill No. 172, approved August 18, 1909, providing for the submission of this amendment to the qualified electors

of the State, fixes the election "on the first Monday after the expiration of three months from and after the final adjournment of the present session of the Legislature at which the amendment is proposed." It will, therefore, be observed that the time for holding the election was not fixed at the *general election* next succeeding the session of the Legislature, but upon another day appointed by the Legislature. This renders such election, in my opinion, a special election, and is embraced within the terms of section 6 of the Act "To further regulate elections in the State of Alabama," approved November 23, 1907. I have heretofore given a liberal construction to section 6 of the act last named, and under my construction as to the Legislative intent embodied in this Act, it is manifest that the Legislature intended that the Registrars should sit in the Court House of each county on Friday and Saturday next preceding the day of each primary, special or general election. It is equally apparent that on Friday and Saturday preceding the election to be held on November 29, 1909, such election being a special election and embraced within the terms of the statute, the Registrars in each county are authorized and required to sit in the Court House and register all applicants falling within any one of the classes named in section 6 of the Act of November 23, 1907.

In statutes relative to elections the term "election" shall apply to the taking of a vote upon a proposed amendment to the Constitution; upon the question of granting licenses for the sale of intoxicating liquors; and upon any other question by law submitted to the voters.—Words and Phrases, Col. 3, p. 2330.

The election to be held upon the Constitutional Amendment on November 29th, is clearly an "election" within the meaning of that word as used in section 6 of the Act "To further regulate elections in the State of Alabama."

The primary meaning of the word "election" is choice; the act of choosing. *State v. Tucker*, 54 Ala. 205. The word "election" is not limited in its definition and meaning to the Act or process of choosing a person for a public office by a vote of the qualified electors. The Century Dictionary defines "election" to mean a deliberate act of choice; particularly a choice of means for accomplishing a given end. In *Worces-*

ter's Dictionary the word "election" is defined as the act of electing or choosing; power of choosing; free choice; preference; selection.

Words and Phrases, Vol. 3, p. 2330;
State v. Hirsch, 125 Ind. 207.

I remain,

Very truly yours,
ALEX. M. GARBER,
Attorney General.

**INSURANCE COMPANIES' BONDS—NO PARTICULAR FORM
OF BOND REQUIRED.**

Aug. 8th, 1909.

Hon. Frank N. Julian,
Insurance Commissioner,
Capitol.

Dear Sir:—

I am in receipt of your letter of the 4th instant stating that under the retaliatory statutes of this State it is necessary for certain Insurance Companies to make deposits of security with the Treasurer of this State or execute a surety bond with some surety company qualified to make official bonds within this State.

In reply to your request to prepare for your Department a form of bond to be used in this connection, I beg to state that in my judgment no particular form of bond will be required, and I suggest that it will be sufficient for the Insurance Companies which are required to file bond, to make such bond in any one of the guarantee companies who have on deposit in this State the required amount authorizing them to execute bonds of this character. See Sections 1507 to 1524 of the Code.

If this letter does not afford you the necessary information, I will be pleased to confer further with you.

I remain,

Yours very truly,
ALEX. M. GARBER,
Attorney General.

**RECORD MORTGAGE TAX—PAYABLE ONLY ON ENTIRE
AMOUNT OF PRINCIPAL—WHEN PRINCIPAL AND
INTEREST NOTES ARE SEPARATE.**

Sept. 8th, 1909.

Hon. J. M. Robinson, Jr.,
Judge of Probate,
Andalusia, Alabama.

Dear Sir:—

Messrs. Coleman, Dent & Weil have requested me to write you my construction of the statute in reference to the record mortgage tax required to be paid to the Probate Judge upon presentation for record of a mortgage, deed of trust, contract of conditional sale or other instrument in the nature of a mortgage. The particular point upon which these gentlemen request me to express my views is with respect to the proper basis of ascertaining the amount of the mortgage tax when the principal and interest are separate and are evidenced by separate principal notes and separate interest notes. I take for granted that you are advised as to my opinion on this question from our previous correspondence. I have held that the privilege tax should only be paid upon the entire amount of the principal in those cases where the principal and interest are separated and evidenced by separate notes. I have held otherwise, however, when the principal and interest are merged into one amount and one or more notes is given for both together. This view is in accord with an opinion on the same subject delivered by my predecessor on this subject.

From your letter to me of June 12th, 1909, with reference to the mortgage tax in the matter of the Florida & Alabama Land Company, I gather that this question would be settled by a test case on the docket of your City Court. I am advised that the case you refer to is the one in which Messrs. Coleman, Dent & Weil are interested. I really would like to see this question adjudicated by the Courts and I am not writing this letter for the purpose of intimating to you that you should abandon this litigation. I think that my position on this question is sound, but none of us are infallible and I would like to see this question carried to the Supreme Court.

I remain,

Yours very truly,
ALEX. M. GARBER,
Attorney General.

REPORT ON REGULARITY OF PASSAGE OF CERTAIN
HOUSE AND SENATE BILLS.

Sept. 17th, 1909.

Hon. B. B. Comer, Governor,
State of Alabama,
Capitol.

Dear Sir:—

In compliance with your request, I have examined the following House and Senate Bills, introduced and passed at the Special Session of the Legislature of Alabama, which convened on July 27th, 1909, to-wit:

Senate Bills.

S. 3, S. 5, S. 7, S. 9, S. 10, S. 14, S. 15, S. 17, S. 21, S. 40, S. 50, S. 62, S. 70, S. 79, S. 80, and S. 87.

House Bills.

H. 10, H. 11, H. 12, H. 13, H. 14, H. 15, H. 17, H. 18, H. 19, H. 20, H. 21, H. 23, H. 32, H. 33, H. 49, H. 54, H. 55, H. 60, H. 61, H. 62, H. 67, H. 68, H. 79, H. 88, H. 104, H. 128, H. 145, H. 149, H. 156, H. 169, H. 172, H. 203, H. 226, H. 246, H. 256, H. 257, H. 266, H. 267, H. 271, H. 285, H. 289, H. 296, H. 301, and H. 324.

My examination of these bills has been confined to checking the entries of the Journals of the Senate and House with respect to the introduction, reference to and report from standing committees, the passage and signing of said Bills in compliance with Constitutional requirements, and the correctness of their titles; and does not include an examination and comparison of amendments, substitutes, etc., shown on the records of the Senate and House Journals, with the original bills and original amendments and substitutes.

In this work, I have been ably assisted by Messrs. J. A. Kyle, Secretary of the Senate, and Cyrus B. Brown, Clerk of the House and their respective clerks.

So far as I am able to discover, after careful and diligent scrutiny, I am pleased to report that the Journals of the Senate and House with reference to the above Senate and House Bills are in proper shape and meet the provisions of the Constitution. Messrs. Kyle and Brown and their clerical assistants deserve to be commended upon the manner in which they have discharged their duties, which are of a very technical and difficult character.

I remain,

Yours very truly,
ALEX. M. GARBER,
Attorney General.

**EXHIBITION OF DOMESTIC WINES IS AGAINST THE POLICY
OF STATE AS DECLARED IN PROHIBITION LAWS.**

Sept. 27th, 1909.

Hon. J. A. Wilkinson, Commissioner,
Agriculture and Industries,
Capitol.

Dear Sir:—

I have your letter of the 14th instant enclosing letter addressed to you by Major E. E. Winters, Secretary of the Alabama Agricultural Association. You request my opinion upon the question submitted to you in Maj. Winters' letter, viz: Whether domestic wines and cordials may be exhibited at the Alabama Agricultural Fair to be held at Montgomery in the near future, without violating the prohibition laws.

In response, I beg to say that I am unable to find any provision on the subject in the various prohibition laws of the State. Neither the Fuller Act nor the Carmichael Act deals in terms with the matter of the exhibition at fairs of the "prohibited liquors and beverages," defined in the Carmichael Act.

As announced in the Fuller Act, the public policy of the State is to discourage the use and consumption of prohibited liquors and beverages; and while the mere exhibition at a

fair of liquors and beverages which *come within the prohibited class* would not constitute a criminal offense, such exhibition would be, in my judgment, in contravention of the declared public policy of the State.

I may add further that there would be no room for any sort of operation of the prohibition statutes of the State in such cases, if by reason of the elements and characteristics of the "domestic wines and cordials" proposed to be exhibited, they did not fall within the class of "prohibited liquors and beverages."

I remain,

Very truly yours,
ALEX. M. GARBER,
Attorney General.

**STOCK LAW—THE PURPOSE OF THE ACT H. B. 30 WAS TO
PROHIBIT PERSONS ALLOWING STOCK TO RUN AT
LARGE IN ANY STOCK LAW DISTRICT BY
GENERAL CONSENT.**

Oct. 9th, 1909.

Dr. C. A. Cary,
State Veterinarian,
Auburn, Alabama.

Dear Sir:—

I am in receipt of your letter of the 4th instant requesting my opinion upon the effect of H. Bill 30, passed at the recent session of the Legislature, prohibiting live stock from running at large in stock law districts or a territory in which such stock are prohibited by law to run at large, upon the stock laws of Montgomery, Elmore, Lowndes, Dallas and Wilcox Counties.

Section 1 of the above act provides that it shall be a misdemeanor for any person who owns or had passession, custody or control of any live stock "unlawfully and knowingly to permit such stock to be or run at large in any stock law district or territory in which such stock are prohibited by law to

run at large." I have not examined the stock laws in force in the counties named, but assume from the statement in your letter that in each of these counties there is "a stock law district or territory in which such stock are prohibited by law to run at large." It appears from the title of the Act as well as the language employed in the body of it, that the sole purpose of the Legislature in the enactment of this law was to prohibit stock from running at large in *any stock law district in which such stock are prohibited by law to run at large*. The purpose of the law, therefore, should not be defeated by common consent of the people in certain stock law districts in which stock are prohibited by law to run at large, by allowing stock to run at large from December 1st to April 1st.

If there are any special features of the stock laws of the particular counties mentioned by you, that you desire me to construe, kindly refer me to the Acts of the Legislature establishing such laws.

I remain,

Very truly yours,
ALEX. M. GARBET,
Attorney General.

**SALE OF STOCK BY INSURANCE CO.—IS IN VIOLATION OF
LAW WHERE STOCK IS SOLD ONLY TO
POLICY HOLDERS.**

Oct. 21, 1909.

Hon. Frank N. Julian,
Secretary of State and Ex-Officio Ins. Com'r.,
Capitol.

Dear Sir:—

I have your letter of the 6th instant enclosing copy of H. B. 62 adopted by the recent extra session of the Legislature, approved August 25th, 1909, entitled "An Act to prohibit misrepresentation, rebating and discriminations by life insurance companies, and prohibiting the issuance of certain special contracts and the sale and issuance of stocks, bonds or other securities in connection with the sale of life insurance."

You state that the Protective Life Insurance Company gives to every applicant for insurance the option to buy a certain number of shares of its capital stock, the said option is printed in and made a part of the policy. I am advised that the Protective Life does not sell its capital stock to any parties other than those carrying insurance policies with the Company," and you desire to be advised whether the fact that the Company limits the sale of its capital stock to parties carrying insurance with the Company is in violation of the statute mentioned.

In reply I beg to advise you that the issuance and sale by the Company of its own stock under the facts as stated is in violation of Section 3 of this Act.

I beg to remain,

Yours very truly,
ALEX. M. GARBER,
Attorney General.

**STOCK LAW—TOOK EFFECT SIXTY DAYS AFTER ITS
PASSAGE—IMPRACTICABLE TO ADVISE CONCERN-
ING ITS EFFECT IN EACH COUNTY
IN STATE.**

Oct. 27th, 1909.

Dr. C. A. Cary,
State Veterinarian,
Auburn, Alabama.

Dear Sir:—

In response to your letter of the 12th instant I beg to say that it will be practically impossible for me to advise you in what manner House Bill No. 30, passed at the recent session of the Legislature, affects each county in the State, unless I should ascertain in each case the local stock law in effect in each county, either established in terms by local acts of the Legislature or, as in many of the counties, the particular stock law districts last established by the County Commissioners as authorized, for instance, by the Act "To authorize the Commissioners Court, or court or Board of County Revenues, of

the counties of Marengo, Sumter, Montgomery, Hale, Dallas, Autauga, Wilcox, Lowndes, Russell, Monroe, Lawrence, and Perry, to establish or abolish districts in which stock may be prevented from running at large." Approved Feb. 22, 1881, (See Acts of 1881, p. 163.)

You will observe from the title of the Act of Feb. 21, 1881, that most of the counties about which you request me to write you are included in this act, and if not repealed, this act authorizes, under certain rules and regulations, the Commissioners Court to establish a stock law district. With the exception of the County of Elmore, it may be advisable for you to write to the Probate Judge of each county and ask for a copy of the stock law districts established by the county commissioners in these counties.

In reply to your inquiry as to when the Act under discussion takes effect, it appears from reading the different sections of the same, that there is no special time provided in the act as to when it shall take effect, and it being a penal statute under section 7805 of the Criminal Code, it would not take effect until sixty days after it approval.

I remain,

Very truly yours,
ALEX. M. GARBER,
Attorney General.

**EXEMPTION FROM JURY DUTY—UNDER NEW UNIFORM
JURY LAW—MEMBERS OF A. N. G. ARE NOT EXEMPT
FROM JURY DUTY.**

Nov. 2nd, 1909.

General Bibb Graves,
Adjutant General A. N. G.,
Capitol.

Dear Sir:—

I have your letter of the 30th ultimo in which you enclose an unofficial letter from me to Maj. D. M. Scott, Selma, Alabama.

The particular exemption considered and referred to in my letter to Maj. Scott, was that of the active members of the Alabama National Guard with respect to jury duty. You call my attention in your letter to section 194 of the Constitution. This section of the Constitution deals only with the question of poll tax.

The exemption of the active members of the Alabama National Guard from jury duty provided in section 984 of the Code was expressly repealed by the Jury Act approved Aug. 31st, 1909. I am returning by letter addressed to Major Scott and affirm the opinion expressed therein by me that unless his clerks come within one of the classes mentioned in section 13 of the Jury Act, they are not now exempt from jury service under this law.

I remain,

Very truly yours,
ALEX. M. GARBER,
Attorney General.

IN RE THE USE OF EXPLOSIVES IN COAL MINES.

Nov. 11th, 1909.

Mr. Ed. Flynn,
Chief Mine Inspector,
Birmingham, Alabama.

Dear Sir:—

I have your favor of the 8th instant enclosing your circular letter of date October 4th, 1909, addressed to the Alabama Coal Mine Operators concerning the use of explosives in coal mines for blasting purposes.

The letter reads as follows:

“Office of State Mine Inspectors,
“Birmingham, Ala., October 4th, 1909.

“To The Alabama Coal Mine Operators:

“About one year ago the United States Government opened an experimental and testing station at Pittsburg, Pa., for the purpose of experimenting with coal dust and

gas, to ascertain their explosive qualities, and to test the different explosives that are used in coal mines for blasting purposes. As a result of these tests the United States Geological Survey, which department has charge of the testing station, issued a list of explosives that have been tested and considered safe in coal mines. Neither black powder or dynamite appear on the list of permissible or safety explosives.

"This department has been making an effort to prohibit the use of dynamite in the mines of this state, and have been very successful. We have also condemned the use of black powder where it is practicable to use one of the safety explosives, especially in dry and dusty mines. We have condemned the use of dynamite in all coal mines.

"All the large coal producing companies are using safety explosives, and a number of smaller ones, but there is some dynamite being used; and it is with a view of stopping the use of dynamite entirely, and black powder where it is possible to do so, that prompts this department to issue this circular.

"As cold weather approaches the danger of explosions from dust and blown out or windy shots increases. This department desires and solicits the co-operation of the coal operators in our efforts to prevent a recurrence of the disasters that have occurred each winter for the past five years and which have been very destructive to life and property; and in order to do this we make the following recommendations:

"1st. That you prohibit the use of dynamite in your mines and use one of the permissible explosives in its place.

"2nd. That where it is practicable or possible to use one of the permissible or safety explosives in the place of black powder, and especially in mines that are dry and dusty, or that generate large quantities of explosive gas, safety explosives be used.

"3rd. That where your mines are dry and dusty that you have them watered, roof, sides and bottom, as often as necessary to keep down the dust.

"4th. That you send clay into the mines and distribute it along the headings where it will be convenient for the miners, and that they be required to use it for tamping their shots.

"5th. That the operators of mines where black powder is being used, have tests made with the safety explosives, and if the safety explosive proves successful in breaking the coal, that it be used instead of black powder.

"These recommendations are made in compliance with Section 1026 of the Mining Law, and you are respectfully requested to comply with same.

"F. F. Rogers,
James Beattie,
George Barbour,
T. H. Tinney,
Board of Examiners."

"Ed. Flynn, Chief Mine Inspector.
James Hillhouse,
Robert Neill,
Associate Mine Inspectors."

And you desire to know whether your Department can enforce the provisions of this circular under section 1026 of the Code.

In reply to your letter I beg to advise you that the letter is within the terms of the aforesaid section of the Code and constitutes the giving of "directions to mine operators, owners and general managers as to the method of working gaseous mines." For a failure to observe your directions you should proceed as otherwise directed in the Code.

I remain,

Very truly yours,
ALEX. M. GARBER,
Attorney General.

**ASSESSMENT OF TAXATION—UNLESS THE ASSESSMENT
IS AGAINST THE OWNER OF THE PROPERTY THE
ASSESSMENT IS INVALID.**

Nov. 11, 1909.

Hon. W. W. Brandon,
State Auditor,
Capitol.

Dear Sir:—

I have a letter under date of November 6th, 1909, from Mr. S. W. Deese, in which he desires to know how he should proceed where lands are assessed for taxation by persons who do not own the same; in other words, where A. and B. each own lands and A. pays tax by mistake in description on the property owned by D. and D. pays no tax at all, whether the tax assessor should assess the land to the rightful owner and require him to pay tax thereon regardless of the fact that the tax has been paid by another person.

In reply to this letter I beg to say that taxes levied and assessed become a legal liability on the tax payer that may be enforced by an action at law. But there must be a valid assessment to constitute such liability, and unless the assessment is made by or against the owner of the property, it is invalid. (Perry County v. R. R. Co., 58 Ala. 546; Crook v. Anniston City Land Co., 93 Ala. 4.) The tax assessor should see that all lands are assessed by or against the owner thereof regardless of whether the same are assessed by any other person. Unless this is done a valid assessment is not made and in the event of a sale of the land for taxes when the same is assessed in the name of some one other than the owner, the purchaser acquires no title. It may be that the taxes will be paid twice in some instances; but it is better that this should be done than that the tax assessor should permit invalid assessment to be made.

I am,

Very truly yours,
ALEX. M. GARBER,
Attorney General.

**PHARMACY BOARD—SECRETARY HAS NO AUTHORITY TO
CHARGE FEE FOR ISSUING PERMIT TO SELL DRUGS
IN TOWNS OF OVER 800 INHABITANTS.**

Nov. 17, 1909.

Dr. E. P. Galt,
Secretary Board of Pharmacy,
Selma, Alabama.

Dear Sir:—

I have your favor of the 13th instant desiring to know whether, under section 13 of the Pharmacy Act of August 26th, 1909, (Special Acts 1909, p. 202) you have the right to charge a fee of \$1.00 for issuing a permit to general dealers in merchandise to sell drugs in towns of over eight hundred inhabitants.

In reply I beg to say that the statute provides that the Board of Pharmacy shall be entitled to charge and collect certain fees therein named, and no authority is given the Board to charge the fee referred to in your letter. I do not find any other provision in the statute which can be construed as authorizing to charge this fee nor do I find any provision under which you could make a by-law or other regulation requiring the payment of the fee.

I remain,

Very truly yours,
ALEX. M. GARBER,
Attorney General.

NO TAX TAG REQUIRED ON MIXED FEED STUFF.

Nov. 20, 1909.

Hon. J. A. Wilkinson,
Commissioner of Agriculture & Industries,
Capitol.

Dear Sir:—

On October 22nd, 1909, you requested me to advise you if you should proceed with the enforcement of the tag tax feature of the Act of August 26th, 1909, (Spec. Acts 1909, p. 269).

Section 1 of this Act provides that certain mixed feed stuffs shall, when offered for sale "be packed in bags or packages containing fifty pounds net weight, or one hundred pounds net weight, or one hundred and seventy-five pounds net weight or two hundred pounds net weight." Section 6 of the Act provides that the Commissioner of Agriculture & Industries "shall make written requisition upon the Auditor for the estimated number of tags or stamps hereafter provided for, required to supply the demand therefor during the year for which such requisition is made." Section 7 provides, that upon the receipt of this requisition the Auditor must have printed a sufficient number of tags or stamps "with proper fastenings on the tags for attaching the same to package or bags of mixed feed stuff," on which shall be printed certain words including the denominations prescribed in the section.

There is no section of the Act which directly requires a tag tax to be paid on such feed stuff. You stated in your letter that a section of this Act which prescribed a tax per ton of twenty cents was omitted from the original bill. There is nothing in either of the sections referred to above, or in any other parts of the Act, which will justify the State in exacting this tag tax. It is true the tags are required to be prepared in certain denominations, but such preparation of the tags cannot, of itself, impose any duty on any one to purchase the same. It is impossible on the face of this Act to determine that it was the intention of the Legislature to require the payment of a tax of twenty cents per ton.

But all other sections of the Act than the tag tax requirement are unaffected and should be enforced as required by law.

I am,

Very truly yours,
ALEX. M. GARBER,
Attorney General.

**IN RE REFUND OF AMOUNT ADVANCED UNDER RULES
OF FEDERAL COURT.**

Nov. 20, 1909.

Hon. W. W. Brandon,
State Auditor,
Capitol.

Dear Sir:—

I am herewith enclosing to you to be certified into the State Treasury to the credit of "the appropriation to defray expenses of the Railroad Commission in litigation with various railroads of Alabama, under Act approved July 31st, 1907," the following checks for the refund of the balance of the amount advanced by the State under the rules of the Federal Court in the appeals taken to the Circuit Court of Appeals for the Fifth Circuit:

Draft or voucher of Louisville & Nashville R. R. Co. for L. & N. R. R. Co. and S. & N. Ala. R. R. Co.,-----	\$4,859.20
Check from Gregory L. Smith for N. C. & St. L. Ry. -----	674.60
Total-----	\$5,533 .80

Amount transmitted to you heretofore on Sep- tember 29th, 1909-----	\$2,801.80
Total amount certified into the Treasury-----	\$8,342.60

The total amount of \$8,342.60, upon examination of your books will be shown as the total amount advanced by the State in the appeals taken by it from the Circuit Court to the Circuit Court of Appeals for the Fifth Circuit. It covers the following warrants issued at different times to me as Attorney General for this purpose, to-wit:

One warrant for-----	\$2,727.60
One warrant for-----	4,415.00
One warrant for-----	1,200.00
Total -----	\$8,342.60

I remain,

Very truly yours,
ALEX. M. GARBER,
Attorney General.

**MEMBERS OF FIRE COMPANIES NOT EXEMPT FROM POLL
TAX UNDER CERTAIN LOCAL ACTS.**

Nov. 25, 1909.

Hon. B. B. Comer,
Governor of Alabama,
Capitol.

Dear Sir:—

On the 24th instant you referred to me a communication addressed to you by Ernest Lamar, et al., of Selma, Alabama, under date of November 20th, 1909, in which the question is raised for the right of members of certain local fire companies at Selma, to vote in the coming election, they not having paid their poll tax in reliance upon an exemption of such members from the payment of such tax contained in the local Legislative Acts passed before 1901, incorporating the companies.

Under section 178 of the Constitution of 1901 no person can vote at any election by the people unless he has paid all poll taxes due from him for the year 1901 and for each subsequent year.

Section 194 of the Constitution provides that "the poll tax mentioned in this article shall be one dollar and fifty cents upon each male inhabitant of the State over the age of twenty-one years and under the age of forty-five years *who would not now be exempt by law.*" It is contended that the members of fire companies to which I have referred are exempt from the payment of the poll tax required by virtue of the clause "who would not now be exempt by law" contained in section 194. I have considered the question very carefully and have reached the conclusion that it was the intention of the Constitution only to exempt those persons from the payment of poll tax who were exempt in 1901 under *general laws* of the State; and that the exemption cannot be extended to those persons who may have been exempt from the payment of poll tax under *local laws* in force in 1901. My attention has been called to many local Acts adopted by the Legislature prior to 1901, in which an exemption from the payment of poll tax is contained in favor of firemen and others; but, in my opinion, the poll tax exemption features of all of these Acts are void.

Under the Constitution of 1875 the poll tax was applied to the support of the public schools in the counties in which they were levied and collected, and the right to vote was in no way dependent on the payment of the tax. The primary purpose of the Constitutional Convention of 1901 was to provide a *uniform suffrage* plan, and the payment of poll tax was a part of this system which is worked out in the Constitution. If the exemptions created by the various local laws are effective, the plan of the Constitution will be seriously impaired. In short, it could not have been the intention of the framers of the Constitution to exempt from the payment of the tax, persons whose right of exemption was founded on local statutes theretofore enacted.

I herewith return letter of Mr. Lamar to you.

Very respectfully,
ALEX. M. GARBER,
Attorney General.

**CONSTRUING THE LAW—REQUIRING THE PAYMENT OF
POLL TAXES.**

November 26th, 1909.

Hon. B. B. Comer, Governor,
Montgomery, Alabama,

Dear Sir:—

In reply to your verbal request, I beg to state:

1st. There seems to be in some respects a conflict in the opinions of the Supreme Court in the case of *Frost vs. State*, 153 Ala. 654 and in the case of *Finklea vs. Farrish*, 49 So. 366. At least, those who join in the dissenting opinion thought that the majority of the court in the latter case should have overruled the *Frost* case. On the other hand, the majority of the court in the *Finklea* case did not think it necessary expressly to overrule the *Frost* case. It would appear that, under the opinion in the *Finklea* case, a man who reached the age of forty-five years prior to October 1st of any year would not be liable, under the Constitution, to pay a poll

tax which became due and payable on October the first of said year.

2nd. Section 3575 of the Code of 1896, which was in force in 1904, expressly exempted Township Trustees from the payment of a poll tax, and under a decision in the Finklea case, *supra*, one who was elected a township trustee in July, 1904, would not be liable for poll tax due and payable October 1st, 1904. But under the Code of 1907, District School Trustees are not exempt from the payment of a poll tax.

3rd. Under the decision in the Finklea case, *supra*, a man joining the Military in July, 1904, would not be liable for poll tax due and payable October 1st, 1904.

4th. A man who failed to pay his poll tax in 1904, would not be a qualified voter though he paid a poll tax for the year 1907, in which year he was exempt by law from payment of a poll tax. The poll tax paid, as shown by the receipt, was for the year 1907 and not for the year 1904.

Respectfully submitted,
Attorney General.

**CORPORATION OPERATING OIL MILL MUST PAY TAX
UNDER SUB. 26 OF 2361 OF CODE OF ALABAMA.**

Dec. 20, 1909.

Hon. Chas. E. McCall,
Assistant Examiner of Public Accounts,
Livingston, Alabama.

Dear Sir:—

Your favor of the 9th instant written from Livingston, Alabama, was duly received, and I will proceed to answer your questions.

You state that a cotton oil company paid the license tax for 1908 required of it as a corporation under subdivision 26 of section 2861 of the Code, but that it failed to pay any tax for operating a cotton seed oil mill.

It is my opinion, and I so advise you, that every corporation operating a cotton seed oil mill must pay the license tax re-

quired by subdivision 27 of section 2361 of the Code in addition to the license tax required of the corporation by said subdivision 26.

You also state that a corporation operating a compress paid the license tax required of it as a corporation under said subdivision 26 of section 2361 of the Code, but that it failed to take out a license for operating a cotton compress; and it is my opinion, and I so advise you, that under subdivision 27a of said section 2361 of the Code the corporation must take out and pay for a license tax for owning or operating a compress, and this in addition to the license tax paid by it under subdivision 26.

You also state that a cotton oil company operates at different points in Sumter County a number of cotton gins, and you desire to know whether the corporation should pay a license tax for operating these gins. I find no provision of law requiring a license tax for operating a cotton gin, and, therefore, it is not necessary for the corporation to pay a license tax for operating a gin. You also state that several cotton oil companies have their seed houses in Sumter County and there employ agents. You do not so state, but I presume that the agents are employed by the companies to buy cotton seed. No privilege tax is required for engaging in the business of buying cotton seed.

You desire to know how far back you should go in forcing the collection of license taxes which have not been paid. You should insist upon the payment of such license for every year for which they were due, regardless of when they became due.

Very respectfully,

ALEX. M. GARBER,

Attorney General

IN RE RAILROAD RATE CASES—REQUESTING A WARRANT
FOR \$3,000.00 TO BE DEPOSITED WITH CLERK
OF FEDERAL COURT.

Dec. 22, 1909.

Hon. B. B. Comer,
Governor of Alabama,
Capitol.

Dear Sir:—

On the 30th day of August, 1909, Hon. Thos. G. Jones, Judge of the United States Circuit Court for the Middle District of Alabama, issued an order in each of the following cases pending in said court against the Railroad Commission of Alabama, et al. viz: L. & N. R. R. Company, South & North R. R. Company, Central of Georgia Ry. Company, Western Ry. of Alabama, and the N. C. & St. L. Ry., that the "complainant and the defendant each pay into the Registry of this court, on or before the 15th day of October, 1909, the sum of Twelve Hundred (\$1200.00) Dollars each, for which the Clerk will give them proper receipt and deposit the amount thus received in the Registry of the Court, subject to its further order."

In the judgment of the court it became necessary to provide a fund in these cases in advance to meet the current necessary expenditures by reason of the fact that a reference had been ordered in the cases to take testimony and report to the court.

The premises considered, and for the purpose of complying with the decree of the court, I request that you direct a warrant to be drawn in my favor, as Attorney General, for the sum of Three Thousand (\$3000.00) Dollars of the Six Thousand (\$6,000.00) Dollars, being Twelve Hundred (\$1200.00) Dollars in each case, to be deposited by me with the Clerk of said court as required by the above mentioned order of the court, for which I will take the proper receipt from the Clerk when the said deposit is made. The balance of \$3,000.00 to be deposited later.

I remain,

Very truly yours,
ALEX. M. GARBER,
Attorney General.

TO THE STATE AUDITOR:

Approved for Three Thousand (\$3,000.00) Dollars.

Pay to Alex. M. Garber, Attorney General, to deposit in the United States Circuit Court in the five cases mentioned, as a partial advance for costs incident to the taking of testimony under the order of reference by the court in these cases, in accordance with the order of August 30, 1909, of the Circuit Court.

Pay out of the fund appropriated under the Acts of the Legislature providing for the expenses of the Railroad Rate litigation.

This the-----day of-----, 19-----

B. B. Comer,
Governor.

**INSURANCE COMPANIES—CONTRACTING WITH AGENTS IN
THIS STATE AND PLANTING AN AGENCY FORCE
DOES CONSTITUTE DOING BUSINESS IN
THIS STATE.**

Jan. 8, 1910.

Hon. Frank N. Julian,
Insurance Commissioner,
Capitol.

Dear Sir:—

I have your favor of the 3rd instant requesting me to advise you whether the Acts mentioned in your letter constitute the doing of business in this State by the United Insurance Company within the meaning of our Constitution and laws.

In reply I beg to say that contracting with agents to represent the company in this State and doing all the functions of planting the agency force of the company, does constitute the doing of business in Alabama within the meaning of our Constitution and Laws.

I herewith return letter of United Insurance Company to you on this subject.

I am,

Very truly yours,
ALEX. M. GARBER,
Attorney General.

**JUVENILE COURT—POLICE AND MAYOR'S COURTS TO HAVE
NO AUTHORITY TO COMMIT BOYS TO ALABAMA
INDUSTRIAL SCHOOL.**

Jan. 10, 1910.

Hon. John Purifoy,
Examiner of Public Accounts,
Capitol.

Dear Sir:—

I have your letter of January 7th, 1910, requesting me to advise you with respect to what Judges are authorized, under section 1960 of the Code, to commit boys to the Alabama Industrial School; and also what courts are authorized under section 1964 of the Code to sentence boys to commitment to such school after conviction.

In connection with this letter you submitted to me your report to the Governor of date January 7th, 1910, from which it appears that boys have been committed to said school by the mayors and judges of various police courts of cities and towns of this State, as well as by the Judges of certain city, criminal and circuit courts, and inferior criminal courts. You desire to know whether all of the Judges and the courts mentioned are authorized to make such commitments. Sometime ago Mr. D. M. Weakley, Supt. of this School, requested me to advise him whether a justice of the peace had such authority, and I will now answer his letter together with your inquiry.

Section 1960 of the Code provides that "any Justice of the Supreme Court, Chancellor, Judge of Probate, Circuit Judge, or Judge of any city or criminal court of this State" may make the commitment. Section 1964 of the Code provides that when any white boy between certain ages "shall have been tried and convicted of any crime punishable by imprisonment in the penitentiary or in jail or by hard labor for the county *before any court of this State*, the court may "commit the boy to this school.

I am of opinion that neither of those sections authorizes a commitment to be made to this school by the mayor or the judge of the police court of any city or town or by any justice of the peace or by the police court or by the court of a justice

of the peace. The statutes do authorize such commitments by the various city, circuit and criminal courts of the State as well as by the Judges of the courts mentioned, and by Judges of Probate.

I herewith return the documents handed me in connection with your letter.

I am,

Very truly yours,
ALEX. M. GARBER,
Attorney General.

ADVISING THE AMOUNT AVAILABLE FOR AGRICULTURAL PRIZES.

Jan. 8, 1910.

Hon. J. A. Wilkinson,
Commissioner of Agriculture and Industries,
Capitol.

Dear Sir:—

I have your favor of the 30th ultimo requesting me to advise you of the funds available to pay prizes to the farmers of the State under the Act of August 26th, 1909, (Special Acts 1909, p. 257).

Under section 73 of the Code the annual appropriation of \$4,000.00 is available for the purpose of paying the prizes under the Act mentioned.

Under section 52 of the Code the Commissioner is required to submit monthly to the Governor an account of the expenses of the Department for the preceding month and an estimate of the expenses for the succeeding month; and with the approval of the Governor, may draw from the treasury not exceeding \$500.00 to meet such expenses, that is, the expenses referred to in the estimate for the succeeding month. The estimate which is submitted monthly, of expenses for the succeeding month, may include such prizes as will become due and payable that month. The balance of the monthly appropriation of \$500.00, over and above the estimate made by the

Commissioner, is not available during any succeeding month to pay the prizes when they become due. In other words, you can only, in my opinion, expend the amount set fourth in the monthly estimate for the succeeding month, and even though there may be a balance over and above the sum of \$500.00 left in the treasury, this balance cannot be reached.

I would suggest with respect to the monthly appropriation of \$500.00 that the dates for the payment of the prizes be fixed so as to exhaust this monthly appropriation as far as possible.

I am,

Very truly yours,
ALEX. M. GARBER,
Attorney General.

**CHOPS MUST BE SOLD IN SACKS WEIGHING 100 AND 175
POUNDS EACH.**

Jan. 13, 1910.

Hon. J. A. Wilkinson,
Commissioner of Agriculture and Industries,
Capitol.

Dear Sir:—

On the 10th instant you referred to me the letter of H. M. Hobbie Grocery Co. to you, in which this company desires to be advised whether chops must be sold in sacks or bags containing the quantity mentioned in the Act of the Legislature, approved Aug. 25th, 1909, (Spec. Acts 1909, p. 268) or in sacks or bags containing the quantities mentioned in the Act of the same Legislature, approved Aug. 26th, 1909, (p. 302).

By the said Act approved Aug. 26th, 1909, it is provided that mill products, such as chops must be sold in sacks or bags weighing 100 and 175 pounds each; and by the said Act approved Aug. 25th, 1909, it is made a misdemeanor to manufacture, grind, repack or to sell chops packed in any other than six pounds, twelve pounds, twenty-four pounds, forty-eight pounds, and ninety-six pound sacks, or ninety-six pound barrels, and one hundred and ninety-six pound barrels, wood

There being a conflict between the two Acts mentioned, it follows that the Act last approved must govern, and, therefore, chops must and can only be sold in sacks or bags weighing one hundred and one hundred and seventy-five pounds each.

I herewith return the letter of H. M. Hobbie Grocery Company to you.

I am,

Very truly yours,
ALEX. M. GARBER,
Attorney General.

IN RE THE DUTY OF CLERKS OF COURTS OF RECORD
RELATIVE TO WITNESS FEES.

Jan. 10, 1910.

Hon. Walter D. Seed,
State Treasurer,
Capitol.

Dear Sir:—

Several days ago you requested me to advise you with respect to the duty of clerks of courts of record in the matter of paying witness fees into the State Treasury under the Act of the Legislature, approved August 26th, 1909, (Spec. Acts 1909, p. 213), and you also call my attention to the Act of the Legislature of the same session approved August 25th, 1909, (Spec. Acts 1909, p. 166).

I have received several letters from clerks of courts calling attention to the conflict hereafter noted between these Acts, and desiring to be advised of their duty in the premises, and this letter is intended to answer all such inquiries which I have received.

By the aforesaid Act of August 25th, 1909, it is made the duty of every Register in Chancery, Probate Judge, Sheriff, Clerk and Clerk and Register to prepare a report in writing, on the approval of the Act, showing the amount of all fiduciary funds in the hands of such official; and section 2 of the Act defines fiduciary funds to include any sums which have come

into the hands of the officer of which he is not the absolute and unqualified owner, *including witness fees*. The Act then provides that the report be filed in certain courts of the State, and after a time named in the Act, the court is directed to order the funds paid into the treasury of the county.

By the aforesaid Act approved August 26th, 1909, it is made the duty of clerks of courts of record within this State to file with the State Treasurer on the 1st day of January of each year, a report of all witness fees collected by them or received by them from their predecessors in office which have not been disbursed to the persons entitled thereto, and to pay into the State Treasury all such fees which have been collected more than two years before the making of the report. The Act contains further details which are intended to carry out the general scheme of paying such fees first into the State Treasury.

The Act of August 25th, 1909, applies to the register in chancery, probate judge, sheriff, clerk and clerk and register, and requires a report by said officer of all fiduciary funds, including witness fees; while the Act of August 26th, 1909, approved one day after the Act just referred to, applies only to clerks of courts of record, and requires such clerk to report and pay into the State Treasury certain witness fees. Both of these Acts must, if possible, be construed so as to give a field of operation to each of them. The only construction which can be given the Acts so as to give each a field of operation is to hold that clerks of courts of record must report and pay into the State Treasury the witness fees mentioned in the Act of August 26th, 1909, and that all other funds which come within the class of fiduciary funds as defined in the Act of August 25th, 1909, are controlled by this Act.

It is evident that the intention of the Legislature was not called to the conflict between the two Acts. Both systems should not be in operation at the same time, but being upon the statute books of the State they must be followed until the Legislature sees fit to change them.

Under the said Act of August 26th, 1909, the clerks are required to file their reports with the State Treasurer and to pay into the State Treasury the witness fees there mentioned.

This Act does not in terms require such fees to be certified into the treasury by the Auditor; but in view of the provision of section 599 of the Code imposing the duty on the State Auditor to superintend the fiscal affairs of the State; to keep all accounts between the State and the State Treasurer charging him with the balance due when he came into office, and with all monies received by him and crediting him with all warrants drawn on the State Treasurer and paid by him: and to draw warrants on the State Treasurer for the payment of all moneys directed by law to be paid out of the Treasury; and in view of the duty imposed on the State Treasury under section 624 of the Code to pay all warrants drawn under the authority of law by the State Auditor, and to pay no money out of the Treasury except on the warrant of the State Auditor; I am of the opinion that the Auditor should keep an account of all witness fees which are paid into the State Treasury as required by the Act, and further, that he should certify into the State Treasury such funds when received from time to time. In other words, these funds must pass through the Auditor's Office in order for him to perform his duty as State Auditor, and in order for him to draw his warrant on the Treasurer for the payment of same from time to time.

I am sending a copy of this letter to the State Auditor for his information, and suggest that you send a copy of this letter to all of the clerks of courts of record of this State.

I am,

Very truly yours,
ALEX. M. GARBER,
Attorney General.

IN RE DISTRICT TRUSTEES—LOCAL ACT REPEALED BY
ACT AUG. 25, 1909.

Jan. 17th, 1910.

Hon. H. C. Gunnels,
Superintendent of Education,
Capitol.

Dear Sir:—

I have your letter of January 17th, 1910, requesting me to advise you whether the Act of the General Assembly, approved Feb. 13th, 1883, (Acts 1882-3, p. 360) has been repealed. This Act establishes a separate School District in Marengo County to be known as the Faunsdale School District, and the State Superintendent of Education is directed by section 2 "immediately on the passage of this Act to appoint a District Superintendent of Education for such District, who shall be required before entering upon the duties of his office to execute a bond for \$4,000.00 which shall be payable, conditioned and approved in the same manner as the bonds of County Superintendents of Education are now payable, conditioned and approved." Sections 3, 4 and 5 of the Act deal with the duty of the District School Superintendent and of the disposition of certain school funds to which the District may be entitled.

There is no provision of this Act nor of any prior or subsequent Act, so far as I can find, which attempts in any way to fix the term of office of the District Superintendent.

There is a well settled rule of law that in the absence of a specific provision to the contrary, the power of removal from office is incident to the power of appointment; and that where the term of an office is not fixed, the officer holds at the pleasure of the appointing power.

Shircliff v. United States, 189 U. S. 315;
Keim v. United States, 177 U. S. 290;
23 A. & E. Ency of Law, (2nd Ed.) 410.

Applying this principle to the present case, it is my conclusion that this District Superintendent holds his office at the

pleasure of the State Superintendent of Education, who is the appointing power under the Act, and that he is removable at the pleasure of that officer.

It is, therefore, my opinion that the Act creating this Special School District is repealed under the influence of the Act approved Aug. 25, 1909, (Special Acts, 1909, p. 115).

I am,

Very truly yours,
ALEX. M. GARBER,
Attorney General.

**IN RE SCHOOL LAWS—AUTHORITY TO RENT LANDS; AND
POWER TO SUBDIVIDE TOWNSHIP INTO DISTRICTS.**

Jan. 17th, 1910.

Hon. H. C. Gunnels,
Superintendent of Education,
Capitol.

Dear Sir:—

On January 17th, 1910, you requested me to advise you upon the following questions:

First. Whether the Act of the General Assembly, approved Feb. 15, 1897, (Acts of 1896-7, p. 1035) and the Act of the General Assembly, approved Feb. 18, 1899, (Local Acts 1898,9, p. 1028), both of which Acts create a separate school district in Jackson County to be known as Section School District, have been repealed.

Second. If the aforesaid Acts are repealed by whom should the lands of this section be rented or leased, and whether the moneys arising from such rental or lease should be paid into the State Treasury, and if paid into the State Treasury, under what conditions the same may be again paid out.

Third. If the aforesaid Acts creating the Section School District are repealed, by whom the District must now be governed and whether the township may be subdivided into districts.

First. It is my opinion, and I so advise you, that if both of the aforesaid Acts of Feb. 15, 1897, and Feb. 18, 1899, are repealed in toto by the Act of the Legislature, approved Aug. 25, 1909, (Special Acts 1909, p. 115).

Second. Both of the aforesaid Acts being repealed, the lands owned by a township must be rented or leased as required by section 1803 of the Code, and the net proceeds of all moneys received from the rent or lease of such lands must be paid into the State Treasury to the credit of this township; and the schools in the township or the schools in the Districts composing the township, are entitled to the moneys arising from the lease or rental of such lands.

Third. That the County Board of Education has entire control of the public schools within the township as provided by section 1715 of the Code and the Board may, if it sees fit, subdivide the township into districts in accordance with section 1691 of the Code. The Trustees of the District or Districts which may be created out of this township must be appointed by the County Board of Education under section 1714 of the Code; such appointees to hold until the regular Trustees are elected in 1912.

Very truly yours,
ALEX. M. GARBER,
Attorney General.

**INSURANCE COMPANIES—NOT REQUIRED TO REPORT ON
“POLICY FEES” COLLECTED BY THEM.**

Jan. 14th, 1910.

Hon. Frank N. Julian,
Insurance Commissioner,
Capitol.

Dear Sir:—

On the 11th instant you requested me to advise you whether under section 4557 of the Code, Insurance Companies are required to report to you and to pay taxes on the “policy fees” collected by them. This section of the Code requires all companies to report the amount of the gross

"premiums" received in this State, and to pay a tax on such gross premiums so received in this State. The "policy fee" here involved is a fee collected by the insurance company, varying according to the age and character of the applicant, and it seems that these fees are in most instances retained by the agents of the company thereof, though in some instances the company obtains a part of the fee.

After giving the matter due consideration, I am of the opinion, and I so advise you, that the policy fee referred to is not included within the term "gross premiums" as used in this statute, and that it is not necessary for the company to make report thereof to your Department nor to pay the tax thereon.

I herewith return all papers handed to me in connection with the matter.

Very truly yours,
ALEX. M. GARBER,
Attorney General.

**SUBDIVISION 70 OF SECTION 2361 HELD REPEALED BY ACT
OF AUG. 26TH, 1909—INCREASES LICENSE OF ITIN-
ERANT VENDOR OF DRUGS, POISONS, ETC.**

Jan. 31st, 1910.

Hon. W. W. Brandon,
State Auditor,
Capitol.

Dear Sir:—

Several days ago you referred to me a letter addressed to you by Hon. John H. Carter, Judge of Probate of Marshall County, in which Judge Carter desires to be advised of the amount of license now required to peddle patent medicines, and whether section 17 of an Act "To regulate the sale, etc., of drugs, medicines, etc.," approved August 26th, 1909, (Acts Special Session, 1909, p. 225) operates to amend subdivision 69 of section 2361 of the Political Code with respect to the amount of license required therein of a peddler of medicine.

Section 17 of the above named Act of August 26th, 1909, does not have reference to subdivision 69 of section 2361 of the Code, but, in my opinion, it does effect an amendment of subdivision 70 of section 2361 of the Code and operates to increase the license of any itinerant vendor of any drug, poison, ointment, or medical preparation from \$100.00 per annum to the State to \$250.00 per annum to the State. The said subdivision 70 of section 2361 of the Code may, therefore, be regarded as repealed, and section 17 of the Act of August 26th, 1909, substituted therefor.

Yours very truly,
ALEX. M. GARBER,
Attorney General.

**LOCAL LAW CREATING WHEEL TAX NOT VOID AS DOUBLE
TAXATION—UNDER LOCAL ACT NO DUTY RESTS
UPON TAX ASSESSOR WITH REFERENCE
TO THIS TAX.**

Jan. 31st, 1910.

Hon. W. W. Brandon,
State Auditor,
Capitol.

Dear Sir:—

I have your letter of the 27th ultimo enclosing a letter addressed to you from Mr. C. C. Sparks, Tax Assessor of Franklin County.

Section 3 of the Act "To amend an Act to provide for the better construction, etc., of the public roads and bridges in Franklin County, Ala., etc., approved July 24th, 1907," approved August 20, 1909, imposes a *wheel tax* on all wagons, buggies or other vehicles of a certain tire width, and is not, in my opinion, in conflict with the general tax statutes imposing an ad valorem tax upon these vehicles. Neither does section 8 of the above named Act render the ad valorem tax "double taxation." The tax assessor under said section 3 is not charged with any duty with respect to the collection of the wheel tax; the duty of the collection of this tax is im-

posed upon the County Superintendent of Public Roads. The county tax assessor is charged with the duty of assessing such property for State and County taxes in the same manner as before the passage of the Special Act referred to above.

I remain,

Very truly yours,
ALEX. M. GARBER,
Attorney General.

**WHEN UNDER SECTION 2411, AS AMENDED, AUDITOR IS
AUTHORIZED TO REFUND LICENSE.**

Feb. 25th, 1910.

Hon. W. W. Brandon,
State Auditor,
Capitol.

Dear Sir:—

Some days ago you requested me to advise you whether section 2411 of the Code as amended by the Act of August 25th, 1909, (see Acts, Special Session 1909, p. 166) was applicable to the case of Al Richter. It appears from the letter of Judge R. I. Burke, addressed to you, and the sworn petition of Al Richter attached thereto, that Al Richter on or about January 1st, 1908, paid to the Probate Judge of Cullman County the sum of \$250.00, for which a license as a retail liquor dealer was "to be issued by the State of Alabama" for the year 1908. It is further represented in the affidavit of Mr. Richter that through a mistake or error of the Probate Judge the amount above named was paid to the Probate Judge for such license, that the same was not due from him and that the said amount was erroneously collected by the Probate Judge. In further appears that on the 1st day of January, 1908, the County of Cullman had become prohibition territory by a vote of the people of said county, that the Probate Judge proceeded on the theory that the prohibition law for Cullman County was unconstitutional on the ground that there had been no valid election in said county

under the Legislative Act providing therefor; that subsequently it was declared by the Supreme Court, in a decision bearing on the question, that Cullman County had legally become prohibition territory on Jan. 1st, 1908:

Section 2411 of the Code of 1907 was amended in an Act approved Aug. 25, by the addition of the following language:

"And any person who, through a mistake or error in the Probate Judge, has paid to the Probate Judge money that was not due from him for such license, or by such mistake has paid to the Probate Judge for such license an amount in excess of that required by law for the business to be carried on by such person under the license, such person shall be entitled to have refunded to him the amount in either event so erroneously collected by the Probate Judge, and the provisions of this section shall apply in cases where money has heretofore been so erroneously paid within two years before the approval of this Act."

Assuming that a State license as a retail liquor dealer was issued to Al Richter on or before January 1st, 1908, authorizing him to do a retail liquor business in Cullman, Alabama, upon the payment of \$250.00, it is my opinion that section 2411 of the Code as amended, covers the case under discussion, and that upon proper certificate and proof the Auditor is authorized to refund to him the said amount.

I herewith return the letter of Judge Burke and the other papers referring to the matter.

I am,

Very respectfully,
ALEX. M. GARBER,
Attorney General.

ADVISING THE MANNER OF COMPLYING WITH THE JUDG-
MENT OF THE SUPREME COURT IN THE PRICE
WILLIAMS CASE—HOW WARRANT SHOULD
BE DRAWN.

March 1st, 1910.

Hon. W. W. Brandon,
State Auditor,
Capitol.

Dear Sir:—

Complying with your verbal request for advice as to the manner of the drawing your warrant on the State Treasurer in compliance with the mandate of the Supreme Court in the case of W. W. Brandon, Auditor, etc. v. Price Williams, Judge of Probate, I beg to advise you as follows:

The judgment of the Supreme Court is that you shall "issue a warrant on the Treasurer for the sum of twenty-five hundred dollars in favor of the petitioner, as Judge of Probate of Mobile County, as prayed for in the petition." The prayer of the petition is as follows: "And that upon the hearing of this petition, and the return of said W. W. Brandon, your Honor will direct that the writ of mandamus issue to the said W. W. Brandon, Auditor of the State of Alabama, commanding him to issue his warrant in favor of the petitioner, on the State Treasurer, for the said sum of twenty-five hundred dollars, being the balance in his hands of the proceeds of the said sale of the said lands to the State Land Company, *as provided under said section 2327 of the Code of 1907.*" By referring to said section 2327 of the Code of 1907, you will find what this warrant must contain.

You will draw a warrant for twenty-five hundred dollars, which amount includes the "county and school taxes and fees and costs due to the different officers of the county specifying each separately;" and if such amounts cannot be ascertained from the records and papers in your office you will make demand on the Judge of Probate of Mobile County to certify the same to you; in either event the warrant can only legally be issued in the manner outlined in the above mentioned sec-

tion of the Code; and the judgment of the court properly directs that it shall issue in this manner.

I am,

Very truly yours,
ALEX. M. GARBER,
Attorney General.

IN RE AGRICULTURAL PRIZES—WHEN FUND IS NOT SUFFICIENT FOR ALL, COMMISSIONER MAY ELECT.

March 18th, 1910.

Hon. J. A. Wilkinson,
Commissioner of Agriculture and Industries,
Capitol.

Dear Sir:—

On January 8th, 1909, I advised you relative to the Act of the Legislature, approved August 26th, 1909, (Special Acts 1909, p. 257) which Act has to do with the offering of prizes for your Department. You now inform me that it is impracticable to offer all of the prizes mentioned in this Act by reason of the fact that the appropriation provided therein is not sufficient to pay all of the prizes. You now desire to be advised whether it is consistent with this statute for you to offer certain of the prizes mentioned in section one which will be sufficient in amount to exhaust the appropriation. In reply to your request I beg to say, that in view of the fact that the appropriation is insufficient to pay all of the prizes I am of opinion that you may legally select certain of the prizes to be offered, amounting in toto to the appropriation available.

I am,

Very truly yours,
ALEX. M. GARBER,
Attorney General.

ADVISING THE ISSUANCE BY AUDITOR OF WARRANT IN
ACCORDANCE WITH JUDGMENT IN CASE OF PRICE
WILLIAMS, JR., v. W. W. BRANDON,
AS STATE AUDITOR.

March 12th, 1910.

Hon. W. W. Brandon,
State Auditor,
Capitol.

Dear Sir:—

Enclosed find a certified copy of the judgment rendered by the City Court of Montgomery on January 23rd, 1909, in the case of Price Williams, Jr., as Judge of Probate of the County of Mobile v. W. W. Brandon, as State Auditor. This judgment was affirmed by the Supreme Court of Alabama on January 30th, 1909, all of which is certified by H. N. Hughes, Clerk of the City Court of Montgomery; also find enclosed the certificate of Judge Price Williams in this matter showing that the amount of the sum of \$3,343.74 is still due to certain officers of Mobile County on account of their fees and costs on the tax sales of lands conveyed by the State Land Company Oct. 14, 1905. You will, therefore, in compliance with the judgment of the City Court of Montgomery as thus affirmed, issue your warrant on the State Treasurer in favor of Price Williams, Jr., as Judge of Probate of Mobile County for the sum of \$2,500.00; and you will attach to your warrant a statement to be signed by you in the following language:

"This warrant is issued pursuant to and in compliance with the judgment of the City Court of Montgomery, rendered January 23rd, 1909, in the case of Price Williams, Jr., Judge of Probate v. W. W. Brandon, State Auditor, which judgment was affirmed by the Supreme Court of Alabama June 30, 1909; all of which more fully appears in and by the certificate of H. N. Hughes, Clerk of the City Court of Montgomery, dated March 11th, 1910, attached to the certificate of Price Williams, Judge of Probate, both of which papers are on file in this office.

March _____, 1910.

State Auditor."

I remain,

Very truly yours,
ALEX. M. GARBER,
Attorney General.

OLD SOLDIERS' HOME—WHO IS ENTITLED TO
ADMISSION.

March 26th, 1910.

Hon. B. B. Comer,
Governor,
Capitol.

Dear Sir:—

I have your favor of the 21st instant with various enclosures concerning the application of Mr. J. P. Hobdy for admission to the Old Soldiers' Home at Mountain Creek, and requesting me to advise you whether under the facts disclosed by these papers, Mr. Hobdy is entitled to admission. Section 2044 of the Code provides for the admission to the Home of indigent Confederate veterans "who shall have been bona fide resident of the State of Alabama for two years prior to making application for admission into the Home." It appears from Judge Edmondson's letter which is attached to Mr. Hobdy's application that Mr. Hobdy has been a resident of Alabama for many years; that about two years ago he went with his wife to Florida on account of her health, where he remained until she died recently, and then he returned to Alabama; that during his absence in Florida he received a pension voucher from this State, and during all that time claimed Alabama as his home. If, when Mr. Hobdy accompanied his wife to Florida, he had the intention of shortly returning to Alabama and did not intend to make Florida his home, such absence will not prevent his admission to the Home. Our Supreme Court has laid down the rule on this question as follows: "It (a change of residence) can be accompanied only by a completed act done with the purpose of consummating a permanent removal from the original domicil, *animo manendi*. The old domicil continues until a new one is acquired *facto et animo*. * * * A change of domicil cannot be inferred from an absence which is shown to be temporary, and attended with the requisite *animus revertendi*. The intention to return is usually the controlling element in the determination of the whole question." (Murphy v. Hunt, 75 Ala. 438.)

If the Board of Trustees are satisfied that Mr. Hobdy's removal to Florida was temporary; that he had the intention of returning to Alabama, and did in fact return, he should be admitted to the Home, provided, of course, his residence in the State, including the time spent in Florida, is in all more than two years and he is otherwise eligible.

I herewith return the papers handed to me in connection with the matter.

I am,

Very truly yours,
ALEX. M. GARBER,
Attorney General.

**SOLDIERS HOME—WIDOW OF CONFEDERATE VETERAN
NOT ENTITLED TO REMAIN AT THE HOME AFTER
THE DEATH OF HER HUSBAND.**

March 26th, 1910.

Hon. B. B. Comer,
Governor,
Capitol.

Dear Sir:—

I have your favor of the 21st instant requesting me to advise you on the question raised in the letter addressed to you by Commandant J. M. Simpson, of the Confederate Soldiers' Home, whether the wife of a Confederate veteran is, under the law entitled to remain at the Home after the death of her husband.

It is my opinion, and I so advise you that under section 2044 of the Code the wife of the Confederate veteran is only entitled to the benefit of the Home when accompanied by her husband; and, consequently, upon the death of her husband she is not entitled longer to remain therein. I regret that this is the law but it is plainly written and it is not within the province of this Department to construe it differently

I am,

Very truly yours,
ALEX. M. GARBER,
Attorney General.

PRIORITY OF STATE'S CLAIM AGAINST INSOLVENT BANK.

April 4th, 1910.

Hon. H. C. Gunnels,
Superintendent of Education,
Capitol.

Dear Sir:—

Several days ago you forwarded to me a letter from Messrs. Aguff & Kelley, of Vernon, Ala., Attorneys for Supt. B. H. Wilkerson, from which letter it appears that Mr. Wilkerson deposited \$3,000.00 of school funds belonging to the State in the Union Bank & Trust Co., which is now insolvent and in the hands of the receiver; that neither the Superintendent nor the State has a bond from the bank to cover this loss, and Messrs. Aguff & Kelley suggest that the State has a priority of payment from the assets of the insolvent bank and desire to be advised in the premises.

The case of Booth v. State of Ga., 131 Ga. 750, to which Messrs. Aguff & Kelley refer holds in effect that the State is entitled to priority of payment out of the assets of an insolvent bank, which is a State depository, as against individual depositors and creditors. This holding is upon the theory that under the common law the sovereign right of the State to priority payment out of the assets of an insolvent existed. I have not investigated the principle further than to examine this case, but it seems to be well founded. There is no statute or rule of decision of our State which deprives the State of priority of payment so far as I can find and, therefore, the above common law principle prevails here as in the State of Georgia. The State is protected from liability by reason of the bond which it holds from Supt. Wilkerson, but if the State can lend its aid to the securing of this money from the assets of the insolvent corporation I think this should be done. To that end I would suggest that the Supt. employ attorneys to file and prosecute such a petition in the name of the State. The petition should be filed in the case which is now pending in Birmingham, and in which the assets of the bank will be distributed to creditors. If Supt. Wilkerson desires to institute such a proceeding I suggest that he and his

attorneys prepare the petition and submit the same to me. It will be instituted through the Attorney General, and I would expect Mr. Wilkerson's attorneys to look after the matter and I will give them authority to do so.

If this proceeding is instituted I would also expect Mr. Wilkerson or his bondsmen to enter into an agreement that this proceeding should be prosecuted for the benefit of Mr. Wilkerson and without prejudice in any way to the right of the State to pursue the principal and the sureties on his bond.

I am,

Very truly yours,
ALEX. M. GARBER,
Attorney General.

**TIMBERS KEPT OR STORED IN THIS STATE EVEN THOUGH
FOR EXPORT, NOT EXEMPT FROM TAXATION.**

April 14th, 1910.

State Tax Commission,
Capitol.
Gentlemen:—

I have your favor of the 4th instant enclosing letter from Mr. Stephen Touart, Tax Commissioner of Mobile County, relative to the liability to taxation of a certain lot of timber held in the County of Mobile by the Chicago Gulf Export & Lumber Co., and the W. K. Syson Timber Co. You state in your letter that the owners of this lumber claim that it is exempt from taxation on the ground that it is held at Mobile for export purposes.

It appears from Mr. Touart's letter that this timber is now, and has been for several years, in the waters of Mobile and is weighted down to keep the sun from affecting it; that part of the original shipment called "hulls," by its owners, was sold to Mobile parties after it arrived at Mobile and while the entire lot was thus weighted down in the water, and that one of the parties interested in the lumber has stated that the owners would sell the same to anyone who would pay their price therefor.

Assuming that this timber was shipped to Mobile there to be held for sale by the owners, as the above facts tend to show, it is my opinion and I so advise you, that the same is subject to taxation and liable for State and County taxes. See the case of General Oil Co. v. Crane, 209 U. S. 211, where under an analogous state of facts, the Supreme Court of the United States held that oil which had been shipped from Pennsylvania and Ohio to Memphis, Tenn., and designated ultimately for points in Arkansas, Louisiana and Mississippi was not property in interstate commerce so as to be exempt from State tax while at Memphis, the distributing point, at which place the oil was unloaded from the tank cars and started to its final destination.

It may be that the owners of this timber expect ultimately to sell and ship the same to some foreign market, but this intention does not relieve the property from present liability to taxation, under the fact above stated.

Very truly yours,
ALEX. M. GARBER,
Attorney General.

**RIGHT OF COUNTY COMMISSIONERS TO CHANGE PRE-
CINCTS—RIGHTS OF JUSTICES OF THE PEACE
IN PRECINCTS REARRANGED.**

April 11th, 1910.

Hon. B. B. Comer,
Governor,
Capitol.

Dear Sir:—

On March 4th you forwarded to me a letter from Messrs. Frank S. Stone and J. H. H. Smith, County Attorney and Judge of Probate, respectively, of Baldwin County, and requested me to advise you upon the questions raised in this letter.

It appears from your letter that the County Commissioners of Baldwin County have changed the precincts by increas-

ing the number from twelve to fifteen, and by reason of this increase several Justices of the Peace who were elected for and resided in the old precincts now reside in entirely new precincts with a different number and the question presented is whether the Justice of the Peace must be reappointed for the precincts as thus re-arranged and whether the Justices of the Peace who were formerly elected may continue to exercise the duties of the offices for the abolished precincts; and also whether the registrars should enumerate the voters in the new precincts.

Section 4637 of the Code provides that "within the limits of every election precinct there shall be two Justices of the Peace elected as provided in the chapter on elections who shall hold office for four years and until their successors are qualified." This section is substantially the same as section 2658 of the Code of 1896, and both sections are founded upon the provisions of the constitution of 1901 and 1875, authorizing the election in each precinct of two Justices of the Peace.

Section 339 of the Code provides "that the counties in this State as now divided into election precincts and the boundaries of such precinct as now divided shall so remain until changed by an order of the Court of County Commissioners," and section 340 of the Code authorizes such change by the Court of County Commissioners in this language: "The Courts of County Commissioners may in their respective counties establish, change, or abolish election precincts and places of voting therein *and may change the boundary lines thereof* as the convenience of the voters in such precincts may in their judgment require."

I presume the Court of County Commissioners of Baldwin County acted under the authority of said sec. 340 in changing the boundary lines of the election precincts of Baldwin County. The right of the Court of County Commissioners and of the Legislature to alter, change or abolish the precincts or boundaries of counties at will, was distinctly recognized by the Supreme Court in the case of the State ex rel. Garrett v. Sawyer, 139 Ala. 138. In this case the Legislature abolished precinct twenty-one of Calhoun County; for which precinct the respondent Sawyer had been elected and commissioned, and the Supreme Court held "that the effect and result of the

Legislature abolishing precinct twenty-one abolished the office of Justice in that precinct."

Applying this principle to the facts of this case when the Court of County Commissioners so changed the boundary lines of any given precinct so that the Justice who was elected for the original precinct was, upon the rearrangement, placed in a different precinct, his office was thereby abolished and he could no longer exercise the duties of the office of the precinct for which he was elected. I do not think that a rearrangement of the boundary lines of a given precinct which did not place the Justice of the Peace in a precinct different from that to which he was elected, would abolish his office and he may continue to exercise the duties of his office in that particular precinct.

The Registrars should, at the time appointed by law, proceed to enumerate the voters in the new precinct, that is, to make the proper record showing the voters of the precincts as rearranged by the Court of County Commissioners.

I am,

Very truly yours,
ALEX. M. GARBER,
Attorney General.

**WITNESSES IN CRIMINAL CASES—NOT ENTITLED TO BUT
ONE FEE FOR A DAYS' ATTENDANCE.**

April 16th, 1910.

Hon. H. Y. Brooke,
Assistant Examiner of Public Accounts,
Birmingham, Alabama.

Dear Sir:—

I have your communication of the 12th instant requesting me to give my opinion as to the proper construction of section 6667 of the Criminal Code of 1907, dealing with the fees of State witnesses when subpoenaed in more cases than one and are in attendance in such cases on the same day.

It is clear from the language of section 6659 that witnesses in criminal cases are only "entitled to one dollar" for each day's attendance and the prescribed mileage. The fact that a witness for the State may be in attendance in more criminal cases than one at the same time does not operate to change the meaning of section 6659. No other reasonable construction of section 6659 can be reached, and when section 6667 is construed in the light of the plain meaning of the former section, an interpretation cannot be given to the latter section which would authorize the issuance to a witness of two or more per diem compensations for the same day, though such witness may have been in attendance in several criminal cases on the same day. A witness would be equally justified in claiming additional mileage for each day during which he was in attendance upon court on the *same case*. This would be manifestly outside of section 6659. The contention pressed upon you would be equally so. The expressions "at the same time" and "while so attending," found in section 6667, relate to the period of time—the number of days—a witness may be in attendance concurrently in more than one criminal case, and the evident purpose of this section is to provide the manner in which he may claim a *per diem compensation* for each day when he is thus in attendance upon court. In the construction of section 6667 regard must be had for the general provision in section 6659, which limits the compensation of a witness in criminal cases "to one dollar per day."

I am,

Very truly yours,
ALEX. M. GARBER,
Attorney General.

IN RE THE MONEY DEPOSITED WITH CLERK OF U. S.
COURT UNDER ORDER OF THAT COURT IN
RAILROAD RATE CASES.

April 18, 1910.

Hon. B. B. Comer,
Governor,
Capitol.

Dear Sir:—

My letter to you under date of December 22nd, 1909, explains the action of the Judge of the United States Circuit Court in issuing an order in each of the contested Railroad Rate Cases requiring the complainant and defendant in each case to pay into the registry of this Court on or before the 15th day of October 1909, the sum of Twelve Hundred (\$1200.00 Dollars each.

In my letter of this date I requested you to direct a warrant to be drawn for the sum of Three Thousand (\$3,000.00) Dollars, which was one-half of the amount required under the order of the court to be deposited by the defendants with the Clerk. This warrant was drawn and the Three Thousand (\$3,000.00) Dollars was deposited with Capt. J. W. Dimmick, Clerk of the U. S. Circuit Court of Montgomery. The court now requests that the balance of Three Thousand (\$3,000.00) Dollars be deposited, as such sum is found to be necessary to meet the current expenditures incident to the proceedings now in progress in these cases. I, therefore, request that you now direct a warrant to be drawn in my favor, as Attorney General, in the said sum of Three Thousand (\$3,000.00) Dollars balance due on the above order of the court. This sum will be deposited by me with the Clerk of the Federal Court, as in the previous instance, and a receipt will be taken for the same.

I remain,

Very truly yours,
ALEX. M. GARBER,
Attorney General.

**JUSTICES OF THE PEACE—NOT ENTITLED TO RETAIN
COSTS IN PRELIMINARY PROCEEDINGS—MAY COL-
LECT FEE FOR ISSUING WARRANT RE-
TURNABLE TO ANOTHER COURT.**

May 11, 1910.

Hon. H. Y. Brooke,
Birmingham, Alabama.

Dear Sir:—

I have your favor of the 15th of April submitting the following questions with request that I advise you on the same:

1. Whether or not Justices of the Peace are entitled under section 7488 of the Code to retain the costs incurred in preliminary trials;

2. Whether Justices of the Peace are allowed a fee for issuing a warrant returnable to another court to be deducted from the amount of fines and forfeitures collected by them making settlements under sec. 7488 of the Code.

Replying to your questions, I advise you as follows:

1. Under section 7488 of the Code Justices of the Peace are not entitled to retain the costs incurred in preliminary trials; but such costs must be taxed in the same manner and paid out of the same fund and at the same time and in the same way as provided in section 6652 of the Code.

2. It is my opinion and I so advise you that while Justices of the Peace are allowed a fee for issuing a warrant returnable to another court, yet, such fees are not entitled to be deducted from any fines and forfeitures collected by them when making settlements required under section 7488 of the Code; but such costs must be taxed and collected in the manner provided in section 6651 of the Code.

I am,

Very truly yours,
ALEX. M. GARBER,
Attorney General.

IN RE THE SURRENDER OF THE SECURITIES OF STONE-
WALL INS. CO. BY STATE INS. COMMISSIONER.

May 11, 1910.

Hon. Frank N. Julian,
Insurance Commissioner,
Capitol.

Dear Sir:—

I have your favor of the 16th of April, 1910, enclosing correspondence in the matter of the surrender by your Department of the securities of the Stonewall Mutual Aid Association, of Mobile, which securities were heretofore deposited in your Department for the benefit of the policy holders, as required by law. You state that the securities to the value of One Thousand (\$1,000.00) Dollars were surrendered by your Department and in lieu thereof, cash was deposited pending the litigation of the Company; and it appears that all claims against the company were from time to time paid or discharged with the exception of a certain judgment in favor of Lillie B. Williamson, in the sum of Thirty-three (\$33.00) Dollars interest and costs amounting in all to Forty-four and 76-100 (\$44.76) Dollars, rendered by G. H. Kruempel, Justice of the Peace, on June 3rd, 1909; and that this judgment remains unsatisfied. Before the judgment was rendered, but after the suit was instituted and while the same was pending before the Justice of the Peace, it appeared from the papers on file in your Department that Mr. R. W. Horn, President of the Stonewall Insurance Company, represented to you and to the Central Trust Company, of Mobile, that certain claims, including the Williamson claim above mentioned, had been disposed of, and pursuant to the request and the advice to your Department contained in the letter of the Secretary of the Central Trust Company, of March 27th, 1909, advising you that this claim, among other claims, had been disposed of, you thereupon remitted to the Secretary of the Central Trust Company the sum of Seventy (\$70.00) Dollars then in your hands, and held by you for the purpose of meeting this among other claims.

I have no doubt that the Secretary of the Central Trust Company, of Mobile, was advised by Mr. Horn that the claim

had been disposed of and that this company acted in perfect good faith in making this representation to you; but, nevertheless, the money was turned over by your Department upon the faith of this representation, which is now found to be incorrect, and it is my opinion, and I so advise you that the State of Alabama, for the benefit of Lillie B. Williamson, may and should institute a suit in the proper courts of Montgomery County, against the Central Trust Company, of Mobile, and R. W. Horn, to recover of them the sum of \$44.76; unless this amount is forthwith paid to the plaintiff in the judgment.

I am returning all papers relating to the matter to your Department and if it is necessary for this action to be brought you may return the same to me.

Very truly yours,
ALEX. M. GARBER,
Attorney General.

IN RE MONEYS DEPOSITED WITH CLERK OF U. S. COURT
IN RAILROAD RATE CASES, UNDER
ORDER OF COURT.

May 18, 1910.

Hon. B. B. Comer,
Governor of Alabama,
Capitol.

Dear Sir:—

Capt, J. W. Dimmick, Clerk of the Circuit Court of the United States, for the Middle District of Alabama, has presented to me statement of court costs expended on behalf of the defendants, the R. R. Commission of Alabama, et al. from January 1st, 1908 up to January 15th, 1910, as follows:

In the case of the Louisville & Nashville R. R.	
Co. v. Railroad Commission of Ala. et al.-----	\$ 52.60
In the case of South & North Ala. R. R. Co. v.	
R. R. Commission of Ala. et al.-----	71.90
In the case of the Nashville, Chattanooga & St.	
L. Ry. v. R. R. Commission of Ala. et al.-----	52.05
Total,-----	<u>\$ 176.55</u>

I request that you direct the Auditor to draw a warrant in my favor, as Attorney General, for the sum of \$176. 55, to pay the above items of costs in the cases named, out of the appropriation made by the Legislature to defray the expenses to be incurred in connection with the Railroad Rate litigation between the various railroads of Alabama and the Railroad Commission.

I remain,

Very respectfully,
ALEX. M. GARBER,
Attorney General.

IN RE SCHOOL LANDS OF DOUBLE HEADS DISTRICT,
COFFEE COUNTY.

May 20, 1910.

Hon. H. C. Gunnels,
Superintendent of Education,
Capitol.

Dear Sir:—

I have your favor of the 18th instant enclosing various deeds relative to the Double Heads School District, in Coffee County.

There seems to be two acres of land which the parties intend to convey to the State. The deed bearing date April 28th, 1910, names the following grantors: I. L. Amos and wife, A. H. Peacock and wife M. F. Peacock, Martha Paul (single woman), W. H. Johnson and wife and ----- Boutwell and wife. I. L. Amos and wife did not execute the deed, and the names of J. P. Brown and wife, Z. A. Brown, are signed thereto. The deed is not sufficient to convey any interest that J. P. Brown and wife may have in the land, because their names are not recited in the body of the deed. Some explanation should be made of the failure of Amos and wife to convey their interest if they have any. There is no separate acknowledgment of the wives of Messrs. Peacock, Johnson, Brown and Boutwell. This should have attention. There is no evidence among the papers that the grantors in this deed

ever owned the land. It seems from Mr. Connally's letter attached to the papers, that A. H. Peacock and wife conveyed the land to Amos and wife on August 18, 1891. And, yet, Amos and wife have not executed any deed.

It also appears that H. J. Wilkins and wife conveyed one acre of land by deed of date October 27th, 1908. This is not the land conveyed by the first above mentioned deed. I do not think that the description "patrons of Double Heads School" is a sufficient description of the grantee and I very much doubt whether any title passed out of the grantors Wilkins and wife. I, therefore, suggest that Wilkins and wife executed a deed to the State for the benefit of the School District No. 21 of Coffee County, on the form furnished by the State for this purpose. The description contained in the deed from Wilkins and wife to the patrons of Double Heads School was indefinite and uncertain, and I think this description should be improved on.

Among the papers there appears a deed from J. L. Johnson, D. W. Clarke and J. J. Wead, conveying two acres of land to the State for the benefit of School District No. 2, Coffee County. It is impossible to tell by the description contained in the deed before me, what interest these grantors have in the land described in the deed, and it seems from all of the papers that this land is the same property which is conveyed in the two separate deeds above mentioned. If A. H. Peacock and wife conveyed one acre of land to the "patrons of Double Heads School" in 1891, I think they should now make another deed to the State on the form furnished by the State, of the same land, for I do not regard that description as sufficient; but if Amos and wife purchased this acre of land from Peacock and wife on August 18th, 1891, as shown in Mr. Connally's letter, then these parties should convey to the State.

As a matter of precaution, I suggest that all of the deeds which have been executed by these parties should be filed for record, and in addition that the deeds which I have pointed out above, be executed.

I am,

Very truly yours,

ALEX. M. GARNER,

Attorney General.

**JUSTICES OF THE PEACE—NOT TO RETAIN FEES FOR
ISSUING SUBPOENAS TO DEFENDANT'S
WITNESSES SEC. 7488 OF CODE.**

June 8, 1910.

Hon. H. Y. Brooke,
Assistant Examiner of Public Accounts,
Capitol.

Dear Sir:—

Replying to your favor of the 17th ultimo I beg to advise you that under section 7488 of the Code it is my opinion that Justices of the Peace cannot retain fees due them for issuing, and to the Constables for serving, subpoenas for the *defendants'* witnesses in making the settlements required under said section of the Code.

Very truly yours,
ALEX. M. GABER,
Attorney General.

**HIGH SCHOOL ACT—STATE MAY COMPEL PAYMENT OF
AMOUNT SUBSCRIBED.**

June 7, 1910.

Hon. H. C. Gunnels,
Superintendent of Education,
Capitol.

Dear Sir:—

I have your favor of the 28th instant enclosing communication from Mr. W. H. Storey, County Superintendent of Education of Pickens County, and requesting me to advise you on the following questions propounded by Mr. Storey:

(1) Has the County Board of Education authority to compel by law the payment of the supplement promised by the town of Reform for the support of the High School?

(2) Is the County Board of Education authorized by law to compel the people of Reform to comply with their contract with the High School Commission "to erect a building and

equipment * * * to cost not less than \$12,500.00 with water works and sewerage system."

Answering the first question I beg to say that by an act approved August 26th, 1909, (Special Acts 1909, p. 230) cities and towns of this State are authorized to convey real or personal property belonging to such cities or towns and to make appropriation from city and town and to issue bonds to aid in the location and in the construction of High Schools and High School buildings under the Act of the Legislature, approved August 7, 1907, and to make appropriations for such High Schools. By section two of this Act all such conveyances and appropriations which were made before its passage were ratified and confirmed. If the town of Reform has made an appropriation for this purpose I am of opinion that a proceeding to enforce the payment thereof should be instituted in the name of the State of Alabama.

Answering the second question I beg to say that a suit may be instituted by the State of Alabama against the citizens of Reform to require them to comply with their contract with the High School Commission as indicated in this question.

I herewith return Mr. Storey's letter.

Very truly yours,
ALEX. M. GARBER,
Attorney General.

**JUDGES OF PROBATE—LIABLE TO FINE FOR FAILURE TO
MAKE REPORT UNDER SECTIONS 730 AND 731
OF CODE.**

June 8, 1910.

Dr. W. H. Sanders,
State Health Officer,
Capitol.

Dear Sir:—

Your communication of the 7th ultimo relative to the failure of certain Judges of Probate to make to your office as required by sections 730 and 731 of the Code of Alabama was duly received.

You desire to be advised whether there is any statute under which Judges of Probate are liable to prosecution or otherwise for this delinquency. In reply I beg to say that in my opinion under section 7457 of the Code the Judges of Probate who fail to furnish the reports required by said sections of the Code are subject on conviction of a fine of not more than \$200.00 and in addition, to removal from office.

Yours very truly,

ALEX. M. GARBER,

Attorney General.

IN RE THE CEDING OF STATE LANDS TO THE
UNITED STATES GOVERNMENT.

June 8th, 1910.

Hon. B. B. Comer,
Governor of Alabama,
Capitol.

Dear Sir:—

I herewith hand you a communication addressed to you by Maj. H. Jervey, of the U. S. Corps of Engineers, making request for you to cede to the United States certain lands herein referred to, which communication you referred to me some weeks ago.

Upon investigation I find that the authority for the State of Alabama to make this grant is contained in section 2428 of the Code of Alabama of 1907. I addressed a communication to Maj. Jervey under date of May 21st, 1910, to ascertain whether the land which is so desired is within the terms of said section, and have received a reply from Maj. Jervey which is herewith enclosed, together with copy of my letter requesting this information. You will thus observe that Maj. Jervey states that the lands in question is the property of the State of Alabama to the best of his belief; that it is submerged and covered by the navigable waters of the United States, and is within the limits of this State, and that the United States desires to acquire title of this site for the purpose of erecting thereon a wharf and warehouse for use as an aid to navigation and in connection with the improvement of

rivers and harbors by the United States in the Mobile District, and that the tract of land in question contains less than four acres. Under these facts it is proper for you to convey to the United States the title to the land, and to cede to the United States the jurisdiction over the same with the reservation, however, mentioned in the aforesaid section 2428 of the Code of Alabama. I herewith hand you an instrument which I have prepared and which, when properly executed, will convey the title to the United States and will cede to the United States jurisdiction over the lands subject to the reservation contained in section 2428 of the Code.

Yours very truly,

ALEX. M. GARBER,

Attorney General.

**SHERIFF'S COST BILL—SHERIFF ENTITLED TO CHARGE
FOR PROPERLY REMOVING PRISONERS FROM
ONE COUNTY TO ANOTHER.**

June 18, 1910.

Hon. W. W. Brandon,
State Auditor,
Capitol.

Dear Sir,—

You referred to me today the cost bill of W. L. Tatum, Sheriff of Crenshaw County, for the fee and expenses of removing one Dean from Covington County to the jail in Crenshaw County. I have examined the cost bill, including the documents attached thereto, and the correspondence with your office and Sheriff Tatum, and it is my opinion and I so advise you that this cost bill is a proper charge against the State and should be paid the sheriff under the authority of the last paragraph of section 6638 of the Code of Alabama. The fact that the prisoner was arrested in Crenshaw County by the Covington County Sheriff and then carried to Andalusia, placed in jail and removed later to Crenshaw County is properly explained and under the facts here disclosed the bill is a proper charge against the State.

Yours very truly,

ALEX. M. GARBER,

Attorney General.

**PENSIONS—PROBATE JUDGE MAY COLLECT AFTER DEATH
OF PENSIONER UNPAID BALANCE.**

June 21, 1910.

Hon. W. W. Brandon,
State Auditor,
Capitol.

Dear Sir.—

I have your favor of the 21st ultimo enclosing letter from Hon. H. P. Lampley, Judge of Probate of Butler County, in which he asks to be advised upon the following question:

“Where a pensioner dies on Dec. 27th, 1909, having received and receipted for his warrant issued Oct. 1st, 1909, is the Probate Judge warranted in endorsing and collecting the warrants issued to said pensioner Jan. 1st, 1910, April 1st, 1910 and July 1st, 1910, and paying the proceeds of all these warrants on the burial expenses and expenses of last illness?

“Sec. 2026 of the Code provides for endorsing and collecting the warrants, etc. but since the adoption of the Act from which Sec. 2026 is taken, the Legislature has provided for the payment of these warrants quarterly.”

By the Act of the General Assembly, approved Feb. 10th, 1899, (Gen. Acts 1898-9, p. 226) the General Assembly established the system of paying pensioners in one warrant the amount due them for the fiscal pension year; and by section 18 of this Act it was made the duty of the judge of Probate to notify the Auditor of the death or removal of the pensioner from the State, and this language concludes the section: “The Auditor upon the receipt of such information shall note the same upon the State Pension Record and discontinue the issuance of warrants in their name; provided, that should a death occur after the issuance and before the delivery of the *warrant for any year* the Probate Judge shall deliver the same to the widow or minor children of the pensioner; should there be no widow or minor children, the *warrant* shall be endorsed by the Probate Judge of the County in which said pensioner resides, collect the same, and the proceeds of the same shall be devoted

to the payment of burial expenses of said pensioner. Thus, it will be seen that if the death of the pensioner occurred after the issuance *and before the delivery of the warrant to the pensioner* for any year, the same should be delivered to the widow or minor child or children of the pensioner; or to the Judge of Probate if there should be no widow or minor child or children of the pensioner, to be by him collected and the proceeds devoted to the payment of burial expenses of the pensioner.

Section 18 of the Act of Feb. 10th, 1899 was amended by section 9 of the Act approved March 4, 1901, (Gen. Acts 1900-1, p. 2165) by providing among other things, that "should a pensioner die *before the first day of May next preceding the issuance of the warrant*, and the name of the widow of such pensioner had not been placed upon the pension roll for the same year, the Judge of Probate shall deliver the warrant to the widow or minor child or children of such deceased pensioner, and should there be no widow or minor child or children of such deceased pensioner, the Judge of Probate shall endorse and collect the warrant and attach to them (it) his certificate showing the facts upon which he is herein authorized to so endorse and collect the warrant and the proceeds thereof he shall apply first to the payment of burial expenses, second, to the expenses of the last illness of such pensioner." Thus, it will be seen that should the pensioner die *before the 1st day of May next preceding the issuance of the warrant*, the statute authorizes its use in the manner and for the purposes therein noted.

The Act of Oct. 9, 1903, (Gen. Acts 1903, p. 492) amended sec. 9 of said Act of March 4, 1901, by requiring the County Board of Pension Examiners in each year to revise the pension roll of their respective counties and providing for the disposition of the warrant in the event of the death of the pensioner after the close of the office of the County Board of Pension Examiners and prior to the issuance of the warrant, and this provision was carried forward into the Code of 1907 as section 2026 without any change of verbage with the exception of two words not necessary to be here noted. The Act of March 6, 1907, (Gen. Acts 1907, p. 360) provided for the payment of the pension fund in quarterly installments on

the 1st day of October, January, April and July of the fiscal year. This Act of March 6th, 1907, did not in any way change the disposition of the warrant in the event of the death of the pensioner after the office of the County Board of Pension Examiners has been closed and prior to the issuance of the warrant; and prior to the said Act of March 6, 1907, one warrant was issued to the pensioner for the entire amount due him for the fiscal year. It was thus contemplated that the proceeds of the one warrant so issued should be used and disposed of as laid down in the several Acts on that subject as revised from time to time; and there is nothing in the present Code to indicate an intention on the part of the Legislature to limit the fund to be so used which arises after the office of the County Board of Examiners is closed and prior to the issuance of the warrants for the fund. By the said Act of March 6, 1907, as before pointed out, the Legislature did not do anything more than change the time of the payment of the amount due the pensioner. In this Act as well as in prior Acts, the amount so due the pensioner was requested to be ascertained by the State Auditor on the 1st day of October in each year; and, by the last Act, directed to be disbursed in quarterly installments. "No rule of statutory construction," said Judge Brickell in *Langford v. Dunklin*, 71 Ala. 594, 609, "rests upon better reasoning than that, in the revision of statutes, alteration of phraseology, the omission or addition of words, will not necessarily change the operation or construction of former statutes. The language of the statute as revised, or the Legislative intent to change the former statute, must be clear before it can be pronounced that there is a change of such statute in construction and operation." Applying this principle to the facts of the case, I am clearly of opinion that section 2026 of the Code must be construed so as to authorize and permit the use and disposition of the unpaid quarterly installments of the pension fund due the pensioner for the fiscal year, and which are unpaid at the death of the pensioner.

Very truly yours,
ALEX. M. GARBER,
Attorney General.

IN RE THE MONEY DEPOSITED WITH CLERK OF U. S.
COURT IN RATE CASES, UNDER ORDER OF
THE COURT.

Savannah, Ga., June 25, 1910.

Hon. B. B. Comer,
Governor of Alabama,
Montgomery, Alabama.

Dear Sir:—

Communications heretofore from this Department to you on Dec. 22nd, 1909, and April 18th, 1910, have advised you of the order of August 30th, 1909, of Hon. Thomas G. Jones, Judge of United States Circuit Court for the Northern Division of the Middle District of Alabama, requiring both complainant and defendants in each of the contested Railroad Rate cases pending in said Court, to pay into the registry of this Court certain sums of money to meet the current necessary expenditures incident to the two references ordered by the Court in said cases.

Reference to my letters of the above dates will show that the first order required a payment into Court on the part of the Defendants in these cases of the sum of Six Thousand Dollars (\$6,000.00). The deposit of this sum was made in partial payments of Three Thousand Dollars (\$3,000.00) each, the first one of Three Thousand Dollars (\$3,000) was dated on the 22d of December, 1909, and the second for a similar sum date on the 18th of April, 1910.

I have been served with a certified copy of the order made on the 18th day of June, 1910, by Hon. Thomas G. Jones, Judge of the United States Court in the following cases:

Central of Georgia Railway Company
vs.

Railroad Commission of Alabama, et al.

Louisville & Nashville Railroad Company,
vs.

Railroad Commission of Alabama, et al.

South & North Alabama Railroad Company,
vs.
Railroad Commission of Alabama, et al.

The order in each case decrees that, "The fund heretofore paid into the court for the expenses of the reference in this case, under the order of August 30, 1909, being almost exhausted, it is thereupon Ordered, Adjudged and Decreed by the Court that the complainant and defendant each pay into the registry of the court, on or before the first day of July, 1910, the sum of Fifteen Hundred (\$1,500.00) Dollars each, for which the Clerk will give a proper receipt, which said amount shall be deposited in the registry of the Court, subject to its further order."

For the purpose of complying with the decree of the court, I request that you direct a warrant to be drawn in my favor as Attorney General for the sum of Four Thousand Five Hundred (\$4,500.00) Dollars, being Fifteen Hundred (\$1,500.00) Dollars in each of the above mentioned causes, to be deposited by me with the clerk of said court as required by said order.

This sum will be deposited by me with the clerk of the Circuit Court, as in previous instances, and receipt taken for same.

I remain,

Respectfully yours,
ALEX. M. GARBER,
Attorney General.

**BUILDING AND LOAN ASSOCIATIONS—NOT EXEMPT FROM
CHARTER FEES PAYABLE UNDER SECTION 345
OF THE CODE.**

July 15th, 1910.

Hon. H. Y. Brooke,
Assistant Examiner of Public Accounts,
Birmingham, Alabama.

Dear Sir:—

I have your letter of June 14th, 1910, requesting me to advise you whether or not Building & Loan Associations are exempt from the payment of the charter fees provided by section 3450 of the Code, when such Building & Loan Associations increase their capital stock.

The aforesaid section 3450 of the Code provides that "at the time the certificate is filed in the office of the Judge of Probate, the incorporators shall pay to the Probate Judge for the use of the State, one dollar for every one thousand dollars of the proposed capital stock, but in no case less than five dollars."

Section 3453 of the Code provides that "before the report of the proceedings of the stockholders increasing the capital stock of the corporation shall be filed, the corporation shall pay to the Judge of Probate, to be reported to the State Auditor and paid into the State Treasury as above provided, the fees as above prescribed upon the increase of such capital stock."

Article 17 of Chapter 69 of the present Code, being sections 3597 to 3612, both inclusive, are devoted to the subject of Building & Loan Associations, and define how they shall be incorporated and in brief their powers. Section 3601 provides for the increase of the capital stock of such companies. There is no section in this article which in any way fixes the fees required to be paid by Building & Loan Association at the time of their incorporation or at the time of the increase of their capital stock, and unless some other provision of the Code controls that subject it would follow that no fees whatever would be paid by such Associations at the time of their

incorporation or at the time of an increase in their capital stock. The present article on Building & Loan Associations is taken almost verbatim from the Code of 1896.

Sections 3450 and 3453 of the present Code are in effect an amendment of sections 1287 and 1288 of the Code of 1896, which section 1287 provided that 'before a commission shall issue to any corporation organized under the general incorporation laws of this State authorizing such corporation to do business, the parties to whom the same is issued, shall pay to the Judge of Probate or other officer issuing the same,' certain proscribed fees; and section 1288 provided that "before the report of the proceedings of the stockholders increasing the capital stock of a corporation shall be filed, such stockholders shall pay to the Judge of Probate or other officer filing the same, to be reported to the Auditor and paid into the treasury as provided in the preceding section, the fee prescribed by the preceding section upon the amount of the capital stock as thus increased, less the amount of the fee as therein prescribed upon the amount of the capital stock before such increase." Thus it will be seen that both sections 1287 and 1288 applied to every corporation organized under the general incorporation laws; and the article of that Code relating to Building & Loan Associations was a part of the general incorporation laws of this State. From all of which it follows in my opinion, that a Building & Loan Association should pay the fees prescribed by section 3453 of the present Code before the report of the proceedings of the stockholders increasing the capital stock is filed with the Judge of Probate.

I have set forth in detail my reasons for this opinion because of the fact that Mr. G. W. Yancy, an Attorney of Birmingham, has taken a position contrary to my views as above expressed.

Yours very truly,
ALEX. M. GARBER,
Attorney General.

**SHERIFFS NOT REQUIRED TO REFUND FEES AFTER
PRISONER HAS ESCAPED.**

July 14th, 1910.

Hon. W. W. Brandon,
State Auditor,
Capitol.

Dear Sir:—

I have your favor of the 11th instant desiring to know whether the sheriff should refund fees paid to him for removing a prisoner and for feeding him for three months prior to his escape; and you refer to that clause of section 6646 of the Criminal Code as follows:

“No sheriff must be paid out of the State Treasury any fee or allowance whatever, on account of any prisoner who has escaped from his custody.”

In reply I beg to say that the clause quoted above from section 6646 of the Code does not require the sheriff to refund the fees paid him for removing a prisoner to his jail and for feeding him prior to his escape.

Yours very truly,
ALEX. M. GARBER,
Attorney General.

**COUNTY NOT REQUIRED TO FURNISH BOOKS, STATIONERY
ETC., TO COUNTY HEALTH OFFICER UNDER
SECTION 706 OF CODE.**

July 18th, 1910.

Dr. W. H. Sanders,
State Health Officer,
Capitol.

Dear Sir:—

Your favor of the 16th instant enclosing letter from Dr. C. W. Brasfield, County Health Officer of Marengo County, relative to the liability of the county for furnishing “Registers” in which County Health Officers are required, under

section 706 of the Code, to keep records of birth, deaths and infectious diseases.

I do not find any general statute requiring the county to furnish the county officers books, stationery, etc., for their use. In prescribing the duties of the various county officers there are sections of the Code in the Chapters relating to such officers specifically requiring the county to supply books, stationery, etc., to them. I do not find any statute imposing upon the county in terms the duty of supplying such registers to the county health officers. In this state of the law there is no obligation, therefore, on the county to furnish the registers above mentioned.

Under section 733 of the Code the appropriation made may be used for the purpose of furnishing such registers.

I herewith return Dr. Brasfield's letters.

Yours very truly,
ALEX. M. GABER,
Attorney General.

IN RE THE SALE OF SCHOOL LANDS BY THE STATE.

July 6th, 1910.

Hon. Frank N. Julian,
Secretary of State,
Capitol.

Dear Sir:—

I have your favor of June 29th, 1910, enclosing contract of December 6th, 1905, between the State Superintendent of Education, and approved by the Governor, for the sale of certain school indemnity lands to Howard Lamar, Trustee; and also enclosing deed from Howard Lamar, Trustee, and Howard Lamar and his wife Alma H. Lamar, dated January 13th, 1906, in which Mr. Lamar transfers the lands described in the above agreement to the Pratt Consolidated Coal Co. You also enclose letter from Mr. Lamar to Mr. H. C. Gunnels, Superintendent of Education, under date of March 25, 1909, in which Mr. Lamar refers to the fact that the lands

which the State agreed to sell to him have been sold by him to the Pratt Consolidated Coal Co. and requesting you to issue deed (patent) to this company upon the completion of all payments. You desire to be advised whether you have authority to issue the patent as directed by Mr. Lamar in this letter, and also whether the transfer from Mr. Lamar, as Trustee, to Pratt Consolidated Coal Company is sufficient.

The contract above described of December 6, 1905, under which the State of Alabama agreed to sell the said lands to Howard Lamar, Trustee, provides for the payment of the purchase price, to-wit: \$30,139.20 in four installments; one of which was paid cash and the other three installments were agreed to be paid in one, two and three years from the date of the agreement with interest thereon; and the State of Alabama binds itself in said agreement to execute to said Howard Lamar its patent, conveying said lands in fee to him upon the payment in full of the purchase money.

You advise me that the purchase money has been paid in full. This agreement of December 5th, 1905, was made pursuant to the provisions of Article 12 of Chapter 100 of the Code of 1896, relating to schools, which Chapter contains sections 3661 and 3666; and it is provided by said section 3666 that "the provision of the preceding article relating to trespasses upon school lands, re-sale, certificate of purchase, re-vesting title, patent, and the collection and application of proceeds of sales, apply to sales under this article so far as applicable." The preceding article referred to in this section contains section 3652 of the Code of 1896 as follows: "A patent issues, on the payment of the purchase money, to the purchaser, his heirs, *or assigns*; and when the patent is to the heirs, it vests a title in all persons entitled to claim in that capacity under the provisions of this Code."

The Code of 1907 does not contain section 3666 of the Code of 1896; but section 3652 of the Code of 1896 relative to the issuance of the patent now appears as section 1796 of the Code of 1907, and the two sections are identical. Notwithstanding, the omission from the Code of 1907 of section 3666, I am of opinion that the patent of the State should issue on the completion of the deferred payments mentioned in the contract with Mr. Lamar, and the only section under which

this patent may issue is section 1796, which provides in terms that it may issue to the original purchaser or his assigns; and this section is sufficient authority for the issuance of the patent to Mr. Lamar's assignee, Pratt Consolidated Coal Co.

I have also examined the instrument of January 15th, 1906, in which Mr. Lamar transfers and conveys the lands which the State agreed to sell to him to the Pratt Consolidated Coal Co., and this instrument is a sufficient transfer on which the State may act in conveying the title to the Coal Company; but before the patent issues I suggest that you require the parties to file this transfer for record in the Probate Office of Walker County, in which county the lands are situated, and require certified copy of same to be filed in your office, together with the above mentioned letter of Howard Lamar of March 25th, 1909, to the Superintendent of Education. If the parties do not desire to file the deed of January 13th, 1906, for record the original of same should be retained in your office and will be sufficient authority for issuance of the patent to the Coal Company.

I herewith return all papers handed to me in connection with the matter.

Yours very truly,
ALEX. M. GARBER,
Attorney General.

**UNDER BANKRUPTCY ACT STATE'S CLAIM FOR TAXES IS
SECOND ONLY TO UNITED STATES CLAIM.**

July 19th, 1910.

Hon. W. W. Brandon,
State Auditor,
Capitol.

Dear Sir:—

I have a letter from Mr. Childs, Tax Collector of Geneva County, under date of March 3rd, 1910; in which he states that he has recently filed several claims with the Referee in Bankruptcy at Dothan, for taxes due the State of Alabama and the County of Geneva, but that such taxes were not paid

because the assets of the estate were only sufficient to pay the court costs and were applied in this manner, on the theory that such court costs were entitled under the law to be paid prior to the taxes.

As this matter relates to the public revenue and is a question of some importance, I reply to Mr. Childs' letter through your Department. By section 64 of the Bankruptcy Act of 1898, it is provided that "the court shall order the trustee to pay all taxes due and owing by the bankrupt to the United State, State, County, District or Municipality in advance of the payment of dividends to creditors, and upon filing the receipts of the proper public officers for such payment he shall be credited with the amount thereof, and in case any question arises as to the amount or legality of any such tax, the same shall be heard and determined by the court." Subdivision B of this section deals with the order of priority of payment of the debts of the bankrupt and the first charge required here to be paid is "the actual and necessary costs of preserving the estate subsequent to filing the petition." Thus, it will be seen that taxes due the United States must be paid first and before any court costs are paid. If there are no taxes due the United States then the taxes due the State and County must next be paid before any court costs are paid.

I suggest that you forward a copy of this opinion to Mr. Childs, with direction to him to take the matter up with the Referee in Bankruptcy at Dothan. If the taxes in certain instances referred to by Mr. Childs have not been paid, it is the duty of the Tax Collector to enforce such payment out of the property assessed, regardless of whose possession it may have passed into as the result of the bankruptcy proceedings.

I am,

Very truly yours,
ALEX. M. GARBER,
Attorney General.

**LOCAL ACT FIXING EX-OFFICIO FEES OF COUNTY OFFICERS
IN LIMESTONE COUNTY NOT REPEALED.**

July 20th, 1909.

Hon. Chas. E. McCall,
Assistant Examiner of Public Accounts,
Capitol.

Dear Sir:—

I have your letter of June 18th, 1910, referring to the several local Acts fixing the ex officio fees of the Clerk, Sheriff and Probate Judge of Limestone County, and desiring to know whether such Acts are affected by the provisions of the Code of 1907 fixing the ex officio fees of such officers. By the Act approved December 9th, 1896, (Acts 1896-7, p. 196) the Court of County Commissioners of Limestone County is authorized to pay to the Clerk of the Circuit Court of that County for ex officio services a sum not exceeding \$400.00. Sections 3714 and 3717 of the Code provide for the payment of ex officio fees to the Clerk of the Circuit Court in amounts varying from \$300.00 to \$500.00.

By the Act approved March 5th, 1901, (Acts 1900-01, p. 2457) the Court of County Commissioners of Limestone County is authorized and empowered to pay to the Sheriff of that County for his ex officio service rendered, including road duties, a sum not exceeding \$400.00. By section 3722 of the Code, the Court of County Commissioners is authorized to pay to the Sheriff a sum not exceeding \$500.00 per annum for ex officio services; provided, the net fees received by him do not exceed \$700.00.

By the Act approved March 5th, 1901, (Acts 1900, p. 2461) the Court of County Commissioners of Limestone County is authorized and empowered to pay to the Judge of Probate of Limestone County for ex officio fees rendered, including road duties, a sum not exceeding \$400.00. Under Section 3720 of the Code the Court of County Commissioners is authorized to pay to the Judge of Probate a sum not exceeding \$200.00 per annum for ex officio services.

There is no provision in the Code expressly repealing the above mentioned local Acts fixing the amount of ex officio

fees as prescribed therein; nor has my attention been called to any statute which repeals either of the said local Acts. By section 3703 of the Code it is provided that "the (ex officio) compensation allowed shall be the fair and reasonable value of the services, in no case to exceed \$200.00 per annum, *unless otherwise provided by law.*" The last clause which I have quoted expressly saves the local Acts above referred to from repeal; and it is my opinion that the said Acts are in force and effect.

Yours very truly,
ALEX. M. GARBER,
Attorney General.

**SECTION 2338 OF CODE OPERATIVE AS TO SALE OF LANDS
BOUGHT IN BY STATE AT TAX SALE.**

July 22nd, 1910.

Hon. B. B. Comer,
Governor of Alabama,
Capitol.

Dear Sir:

Several days ago you forwarded to me a communication from the Magnetic Ore Company relative to the adjustment of taxes on the property of this company in Chilton county. It appears from this communication that certain lands of this company were sold more than two years ago for taxes and purchased by the State, and that the lands have not been redeemed and you desire to be advised whether this real estate may be sold by the State at private sale at a price to be fixed by the Auditor and Treasurer, with your approval, under section 2338 of the Code, or whether the land must be sold for a sum of money sufficient to cover and satisfy all claims in the State and County, which sum shall not be less than the whole amount of taxes, interest, costs and officers' fees, under the provisions of section 2323 of the Code.

Section 2333 of the Code is a part of the Act of February 13, 1899 (Gen. Acts, 1899, p. 120). Section 2323 of the Code is in substantially the language of section 4100 of the Code of 1896. In the case of *Brandon v. Williams*, 157 Ala. 386, and

reported on second appeal in 51 So. 873, the question was presented of whether the said Act of February 13, 1899 repealed section 4100 of the Code of 1896, and the court held in effect that the Act did repeal the section of the Code in so far as the Code was in conflict therewith. The Act of February 13, 1899 was carried into the present Code along with the former section 4100, and the question is now presented as to which statute controls. It is a principle of law that "where there are two conflicting sections in a Code or compilation of statutes, that section prevails which is derived from a source which can be considered as the last expression of the law making power without regard to the relative position of such sections in the Code." 26 A. & E. Ency. of Law, 2nd Ed. 735. The two sections under consideration are in conflict. The last one, section 2338, is the last expression of the law-making power, having been enacted by the Legislature after the old section 4100 became the law; and applying the rule of law to which I have referred above, it follows that section 2338 prevails, and the Auditor, with the approval of the Governor, may sell the lands under the condition named in this section at a price to be fixed by the Auditor and Treasurer, to be approved by the Governor; and this price may be less than the whole amount of taxes, interest, costs and officers' fees.

I herewith return all of the papers handed to me in connection with the matter.

Yours very truly.

ALEX. M. GARBER,
Attorney General.

**A DISCOUNT TO STOCKHOLDER OF INSURANCE COMPANY
ON PREMIUMS IS A DISCRIMINATION AGAINST OTHER
POLICYHOLDERS AND AMOUNTS TO A REBATE.**

July 29th, 1910.

Hon. A. C. Sexton,
Deputy Insurance Commissioner,
Capitol.

Dear Sir:—

I have your letter of July 18th, 1910, in which you state that the Southern States Fire & Casualty Co., of Birmingham, organized under the laws of this State, and licensed by your Department to transact a fire insurance business, is offering insurance to its stockholders at fifteen per cent. reduction from the schedule rates of insurance, and that in some such instances there are agreements between the stockholders of the company and the company, which provide for such discount or reduction in favor of the stockholders; and you desire to be advised;

1. Whether or not the stockholder who thus places his insurance with the company and does not place it through a licensed agent of the State should be licensed as an agent, as other agents are licensed who solicit fire insurance;

2. Where the company so allows its stockholders a discount of fifteen per cent. from the schedule rates of insurance and does not allow the same discount to its policyholders who are not stockholders, do such facts constitute an unlawful discrimination between policyholders as well as an unlawful rebate to those stockholders thus receiving a discount.

1. Answering your first question I beg to say that I do not find any statute which requires a stockholder of a company who places his insurance direct with the company to obtain a license as an insurance agent. In other words, the Act of a stockholder in insuring direct with the company does not constitute the stockholder an insurance agent in the sense that he must be licensed so to act. Of course, if he goes beyond these facts and acts for others than himself in

the placing of such insurance with the company, he may become an agent in the sense that he would be required to take out and pay for a license.

2. Answering your second question, I beg to say that section 4579 of the Code provides that "*no life nor any other insurance company* nor any agent thereof, shall make any contract of insurance or agreement as to policy contract other than is plainly expressed in the policy issued thereon; nor shall any such company or agent pay or allow or offer to pay or allow, as inducement to insure, any *rebate of premiums payable on the policy*, nor shall any particular policyholder of the same class be allowed any advantage in the dividends or other benefits accruing thereon, or any valuable consideration or inducement whatever, not specified in the policy contract of insurance."

Under the facts stated in this question, the act of the company in allowing the stockholder a discount of fifteen per cent. from the schedule rates of insurance, such discount not being allowed to other policyholders, constitutes an unfair discrimination between policyholders; and at the same time constitute a "rebate" within the meaning of section 4579, and is expressly prohibited thereby.

Yours very truly,
ALEX. M. GARBER,
Attorney General.

**WITNESSES SUMMONED BY FIRE MARSHAL NOT
ENTITLED TO FEES.**

July 29th, 1910.

Hon. Lorrie Rice,
Fire Marshal,
Capitol.

Dear Sir:—

I have your letter of May 21st, 1910, requesting to be advised whether the act of August 31, 1909, (Special Acts 1909, p. 321) authorizes the payment of witnesses summoned by you as Fire Marshal, in making investigation of supposed

incendiary fires as provided under the said Act. Upon examination of the Act, I do not find any provision authorizing the payment of the fees of such witnesses, and it is my opinion and I so advise you, that in the absence of such authority, the witnesses cannot be paid any fees. Section 10 of the Act directs the payment to the Chief of Police, Marshal or Sheriff for services performed under the Act, the fees for like services as now allowed by law. The omission in this section to refer to witnesses shows that the Legislature intended that they should not be paid any fees.

Yours very truly,
ALEX. M. GARBER,
Attorney General.

**MUTUAL AID SOCIETY—MAY AMEND ITS CHARTER AND IN-
CREASE ITS CAPITAL STOCK IN THE SAME AMEND-
MENT—BUT SUCH AMENDMENT MUST COMPLY
WITH LAWS IN REGARD TO THE AMOUNT
OF CAPITAL STOCK REQUIRED OF
INSURANCE COMPANIES.**

July 29th, 1910.

Hon. Frank N. Julian,
Secretary of State,
Capitol.

Dear Sir:—

I have your letters of May 23rd and July 18th, 1910, requesting to be advised upon the following propositions:

1. Whether a corporation organized under the laws of this State as a Mutual Aid Association may amend its charter and by the same amendment increase its capital stock from the amount originally authorized in its certificate of incorporation to one million dollars, and change its name and add powers to its charter authorizing it to write fire and a general line of casualty insurance;

2. Whether, if such insurance company may so amend its charter the law requires such company to have a paid up cap-

ital stock of a fixed amount not otherwise required of insurance companies.

1. Answering the first question, I beg to say that a corporation organized under the laws of this State as a Mutual Aid Association is authorized by section 3583 of the Code to increase its capital stock beyond the amount named in its certificate of incorporation; and such company may also change its name and may add to its charter the power to write fire and a general line of Casualty Insurance; but the change of name and the addition of such powers should, of course, be authorized in the manner directed in section 3462 of the Code.

2. Answering your second question, I beg to say that it is my opinion that if such company adds to its charter the power to write fire and a general line of Casualty Insurance the stockholders, however, must subscribe and pay for capital stock in an amount which other provisions of the statute require of corporations proposing to write such fire and Casualty Insurance. In other words, contemporaneously with the making of the amendment adding the powers under consideration there must be a compliance with the statutes requiring such insurance companies to have a certain amount of paid up capital stock. If, however, the corporation fails contemporaneously with the making of the amendment adding the additional powers, to subscribe and pay for the amount of capital otherwise required to engage in the business of fire and Casualty Insurance, it is my opinion that that part of the amendment adding the powers named is void and does not authorize the company to write fire and other casualty insurance.

As I pointed out above, the amendment changing the name and adding the powers to write fire and other casualty insurance may be made in the manner prescribed by section 3462 of the Code, the last clause of which provides that "such certificate of change, alteration, amendment, renewal or extension shall contain only such provisions as would be lawful and proper to insert in an original certificate of incorporation, made at the time of making such amendment." Obviously, it would not have been proper to insert in the original certificate of incorporation any power to write fire, life or

casualty insurance unless the certificate also contained evidence of the fact that at least one hundred thousand dollars of the capital stock had been subscribed and paid for and that the company had a fully paid up capital stock of not less than one hundred thousand dollars, as required by section 3563 of the Code. That being true, it follows that the additional powers mentioned in the amendment would also be improper unless accompanied with evidence of a fully paid up cash capital of not less than one hundred thousand dollars. It is the policy of the statutes throughout to require corporations engaging in the business of insurance, in any of its branches, to have a fully paid up cash capital of not less than one hundred thousand dollars; and to sanction an organization in which it is sought to avoid this requirement by amending the charter of an existing mutual Aid Company, is merely an evasion of the law which should not be sanctioned and which in fact, is illegal.

Yours very truly,
ALEX. M. GARBER,
Attorney General.

**SHERIFF NOT ENTITLED TO FEE FOR ATTENDANCE ON
COUNTY COURT.**

August 8th, 1910.

Hon. H. F. Lee,
Assistant Examiner of Public Accounts,
Montgomery, Alabama.

Dear Sir:—

I have your letter of the 3rd instant, requesting to be advised of the fees to which the sheriff is entitled for attendance upon the chancery, circuit, county and commissioners' courts.

In reply, I beg to advise you as follows:

Under Section 3722 of the Code, the sheriff is entitled to a fee of \$2.00 for each day's attendance upon the Chancery Court, to be paid out of the county treasury.

Section 3264 of the Code requires the sheriff to summon three bailiffs, constables, or deputies to attend at each term of the Circuit Court, and he may, on order of the court, summon additional deputies; and Section 3265 provides that such *constable or deputies* attending receive \$2.00 for each day's attendance, to be paid out of the county treasury, on the certificate of the clerk, showing the number of days they have attended. Under this section, you will observe that the *sheriff* is not entitled to a fee for such attendance upon the circuit court, but that the fee is payable to the constable or deputy who attends. But in criminal cases, under Section 6638 of the Code, the *sheriff* is entitled to a fee of \$2.00 for each day's attendance at any special term of the Circuit Court and in *Torbert v. Hale County*, 131 Ala. 143, the Supreme Court held that the sheriff was not entitled to extra compensation for his services for attendance upon the *regular* terms of the Circuit Court, when the court is engaged in the trial of criminal cases.

By Section 6699 of the Code, the sheriff or deputy sheriff is required to attend on the terms of the county court; and in their absence, some suitable person may be appointed by the court to act in their stead, whose compensation is \$2.00 per day, and paid out of the county treasury; and in *Torbert v. Hale County*, *supra*, the court held that the *sheriff* was not entitled to extra compensation for his services and attendance upon the county court, when such court is engaged in the trial of criminal cases. The statute has not been changed since the decision in the *Torbert* case, and therefore the sheriff is not entitled to such fee.

I find no general statute authorizing the payment of any fee to the sheriff or his deputy, for attendance upon the county court, when engaged in the trial of civil cases. Such fee, however, may be provided in the acts creating the several county courts, to which you should refer when the question arises.

I find no statute authorizing the payment of any fee to the sheriff or his deputy for attendance upon the commissioners' court.

Subdivision 2 of Section 5870 of the Code makes it the duty of the sheriff to attend upon the chancery and circuit

courts, when in session, and the courts of probate, the county court, and the court of county commissioners, when required by the Judge of Probate. But a fee for such attendance can only be paid where the statute directs such payment. (Torberv. Hale County, supra.)

Yours very truly,
ALEX. M. GARBER,
Attorney General.

FEES OF SHERIFF FOR ARREST AND COMMITMENT OF DEFENDANT ARE NOT PROPER CHARGES AGAINST FINE AND FORFEITURE FUND.

August 8th, 1910.

Hon. H. F. Lee,
Assistant Examiner of Public Accounts,
Montgomery, Alabama.

Dear Sir:—

I have your letter of the 3rd instant, requesting to be advised whether the fees of the sheriff incident to the arrest and commitment of a defendant constitute a proper charge against the fine and forfeiture fund, where a grand jury does not indict the defendant.

In reply, I beg to advise you that in the absence of a local statute, Section 6889 of the Code provides the only cases for the payment of the fees of the officers of the court from the fine and forfeiture fund, and such costs are therefore not a proper charge against this fund. (Hawkins v. State, 124 Ala. 402.)

Yours very truly,
ALEX. M. GARBER,
Attorney General.

**WITNESS FROM OUTSIDE OF STATE ENTITLED TO MILEAGE
ONLY FROM STATE LINE TO PLACE OF TRIAL.**

Aug. 8, 1910.

Hon. J. Craig Smith,
President Board of Inspectors of Convicts,
Montgomery, Ala.

Dear Sir:

Several days ago you referred me to the letter from Mr. Jno. G. Bradley, clerk of the Criminal Court of Jefferson County, to you of Aug. 4, 1910, in which he requests you to advise him whether a witness who attends a trial of a criminal case from beyond the state is entitled to a witness certificate for the whole number of miles traveled; or whether the witness may only receive his fees for the number of miles traveled each way to the place of trial from the state line.

In response to your request, I beg to advise you that no witness is entitled to be paid for his attendance at the trial of a criminal case except for the distance to and from the state line. While the statutes (Code, Sections 3673 et seq.) regulating the fees of witnesses do not in direct terms fix the basis of the fees of witnesses under the facts mentioned, yet in the absence of direct authority of law for such payment, it is the rule that the witness may be paid only for attendance on the trial from a point within the state.

Mr. Bradley states that the Convict Bureau was advised by Attorney General Martin in 1901 that the witness should be paid for the entire distance traveled by him beyond the state. But Mr. Bradley is mistaken with reference to Mr. Martin, for he was Attorney General from 1889 to 1894, and could not therefore have given such advice; and I have been unable to find any such opinion in the office of the Attorney General.

I herewith return Mr. Bradley's letter.

Yours very truly,
ALEX. M. GARBER,
Attorney General.

**A SINGLE PURCHASE OF COTTON WILL NOT RENDER PUR-
CHASER LIABLE FOR LICENSE UNDER SUB. 27,
SECTION 2361.**

Aug. 8, 1910.

Hon. W. W. Brandon, State Auditor,
Capitol.

Dear Sir:

I have your letter of Aug. 2, 1910, enclosing correspondence between Hon. G. J. Sorrell, Judge of Probate of Tallapoosa County, and F. B. Fisk Cotton Co., with respect to the liability of this company for the payment of a license in Tallapoosa County as a cotton buyer.

It appears that the F. B. Fisk Cotton Co. is a corporation engaged in business at Montgomery as a cotton buyer, and that the company agreed, in a telephone conversation with Mr. J. D. Fuller, of Dadeville, to purchase from the latter 238 bales of cotton, on certain terms, and that the company then sent its representative to Dadeville, to verify the weights and grades of the cotton; that it has no office in Dadeville, and that this is the only transaction for which the company is sought to be held liable for the payment of license tax in Tallapoosa County, as a cotton buyer.

Subdivision 27, of Section 2361 of the Code, provides that, "Each person, firm, or corporation whose principal business is buying cotton, ten dollars, to be paid in each county in which such person, firm, or corporation buys cotton."

While under the facts in this case the sale was probably completed at Dadeville (McFadden v. Henderson, 128 Ala. 221), yet it has long been the settled law of this state that a single act pertaining to a particular business will not constitute the engaging in or carrying on of that business, unless coupled with the intent to continue in such acts. (Weil v. State, 52 Ala. 19. The Morning Star v. State, 135 Ala. 65.) An indictment against the company for buying cotton in Tallapoosa County would be insufficient, and it would be necessary, to constitute a violation of the revenue law, to aver that the company was engaged in or did carry on the business of buying cotton. (Weil v. State, supra.)

Thus it will be seen that it is the business or occupation of buying cotton that is taxed by the revenue law, and not a single act, as in this case. There is no suggestion that the cotton company had the intention of continuing in the buying of cotton in Tallapoosa County, and indeed they advise that they have not made any sales since that time, and have now no intention of doing so.

Under the facts, I am forced to differ with the Judge of Probate, and to hold that the company is not liable for this tax.

I herewith return Judge Sorrell's letter.

Yours very truly,
ALEX. M. GARBER,
Attorney General.

**INSURANCE COMPANY HELD TO BE LEGALLY ORGANIZED
AND INCORPORATED.**

Aug. 25th, 1910.

Hon. Frank N. Julian,
Insurance Commissioner,
Capitol.

Dear Sir:

I have your letter of the 17th inst., enclosing copies of letters of Mr. H. D. Wilson to your department, and of the Attorney General and Assistant Attorney General of Louisiana to the Assistant Secretary of State of Louisiana, relative to the Interstate Casualty Company; and you desire to be advised whether or not this company was duly and legally organized and incorporated, and entitled to the license heretofore issued to it by the Insurance Department of Alabama for the transaction of the business in which it is engaged. With your letter you transmit to me certified copy of the proceedings in the organization of this company, which documents I have carefully examined; and it is my opinion, and I so advise you, that it appears therefrom that the Interstate Casualty Company was legally organized and incorpo-

rated under the laws of the State of Alabama, and was entitled to a license from the Insurance Department of Alabama when the same was granted for the transaction of the business in which it was engaged; provided, of course, you are satisfied of the solvency of the company, and of the fact that its assets were invested in the form and manner required by law. This, of course, was and is for the determination of your department.

I herewith return the documents forwarded to me in connection with the matter.

Yours very truly,
ALEX. M. GARBER,
Attorney General.

**ONLY RESIDENTS OF ALABAMA MAY BE PLACED IN BOYS
INDUSTRIAL SCHOOL.**

Sept. 6th, 1910.

Mrs. Erwin Craighead, V. P.,
Alabama Boys' Industrial School,
Mobile, Alabama.

My dear Mrs. Craighead:

I have your letter of the 3rd instant containing the following inquiry:

"A Mrs. Dacey, now residing in Biloxi, Miss., but until recently a resident of Alabama, wants to get her son into the Alabama Boys' Industrial School, and bases her request upon the fact that she still owns and pays taxes on property in Clarke County, Alabama, her old home. Does this entitle her to claim admission for the boy?"

It is my opinion that the provisions of section 1959 only apply to white boys and parents of white boys who *reside in Alabama*.

It appears from section 1965 that the Board of Directors may in its discretion receive a child without the authority of any court when the parents of such child have made provision for its maintenance. In my judgment the provisions of this section also apply to residents of Alabama.

It will be observed that all of the sections embraced under Article 29 of the Code devoted to the "Reformatory and Industrial School" have been constructed with the clear and manifest purpose of providing for white boys of Alabama between the ages of six and eighteen who are likely to become base or criminal or hurtful to the *State* or the best interest of society.

I beg to remain,

Very respectfully,
ALEX. M. GARBER,
Attorney General.

STATE CAN NOT CANCEL LICENSE OF FOREIGN CORPORATION FOR REMOVING SUIT FROM A STATE COURT TO FEDERAL COURT.

Sept. 10th, 1910.

Hon. Frank N. Julian,
Secretary of State,
Capitol.

Dear Sir:—

From time to time since the announcement of the decision of the Supreme Court of the United States in the case of *Herndon v. Chicago R. I. & P. R. R. Co.*, 218 U. S. 135, inquiries have reached this office, both from your Department and from several of the foreign corporations transacting business in Alabama, in respect to the application to a certain class of foreign corporations, of the provisions of section 3654 of the Code of 1907, codified from the Act of March 4th, 1907, relating to the cancellation of permits of foreign corporations to do business in the State of Alabama for removing causes of action from any of the courts of this State to any Federal court, under the principles declared by the court in the above case.

In a recent opinion to the State Auditor upon the subject of the rights of those foreign corporations which had come into and were doing business within the State prior to the franchise tax act of March 7th, 1907, with the permission of

the State, and had acquired, under the sanction of its laws, a large amount of permanent and valuable property, and had established therein an extensive domestic business, I had occasion to construe and apply the general principles announced by the Supreme Court of the United States in the cases of the Western Union Telegraph Co. v. Kansas, 216 U. S. 1, and Southern Ry. Co. v. Green, 216 U. S. 400, with respect to the liability of the various foreign corporations doing business in Alabama for the tax required under the provisions of the above Act. The court held that the class of foreign corporations which had been admitted to do business in the State prior to the adoption of the Act by the Legislature, and had acquired therein valuable property and had established an intrastate business, were persons within the jurisdiction of the State of Alabama within the meaning of the Fourteenth Amendment and, therefore, such corporations were entitled to be protected against any statute of the State which deprived them of the equal protection of the laws, and that the imposition of the franchise tax under discussion, being different and more onerous than the tax demanded of domestic corporations for the same privilege, amounted to a denial of the equal protection of the laws and was in conflict with the Federal Constitution.

One of the Constitutional questions involved in the case of Herndon v. Chicago R. I. & P. R. R. Co., *supra*, was whether or not, under the Act of March 13th, 1907 (of Mo.) the license and right of the complainant to do business in the State of Missouri, could be lawfully revoked because it had begun a suit, in a Federal Court, or had removed a suit from a State court to a Federal court, complainant being a corporation organized in another State. The main contention of the complaint was that the provision of the above Act of the Legislature of the State of Missouri in respect to the forfeits and penalties imposed upon it for bringing a case in the Federal or the removal of one to the Federal Court, was violative of its rights under the Federal Constitution. The facts of this case show that the railroad company had entered the State of Missouri in accordance with the laws of that State some years prior to the passage of the Legislative Act, and had acquired therein valuable vested property rights, amounting to an assessed taxed value of several millions of dollars, at the time of its passage. It appears also that this statute of Mis-

souri was similar, with respect to fines and penalties, to section 3654 of the Code of Alabama.

The court resorted to the principles deduced and elaborated in the case of *Western Union Telegraph Co. v. Kansas*, supra, and followed in the case of *Southern R. R. Company v. Greene*, supra, and extended the doctrine announced therein to this case in the following language of Mr. Justice Day, speaking for the Court:

"As to the validity of the act of March 13, 1907, forfeiting the right of the company to do business in the state of Missouri, and subjecting it to penalties in case it should bring a suit in the Federal courts, or remove one from the state courts to the Federal courts, but little need be said. This is so because of the cases decided at this term, involving contentions kindred to the one made in this case. (citing cases).

Applying the principles announced in those cases, it is evident that the act in controversy cannot stand, in view of the provisions of the Constitution of the United States. Moreover, this is not a case where the state has undertaken to prevent the coming of the corporation into its borders for the purpose of carrying on business. The corporation was within the state, complying with its laws, and had acquired, under the sanction of the state, a large amount of property within its borders, and thus had become a person within the state, within the meaning of the Constitution, and entitled to its protection. Under the statute in controversy, a domestic railroad company might bring an action in the Federal court, or, in a proper case, remove one thereto, without being subject to the forfeiture of its right to do business, or to the imposition of penalties provided for in the act. In all the cases in this court, discussing the right of the states to exclude foreign corporations, and to prevent them from removing cases to the Federal courts, it has been conceded that while the right to do local business within the State may not have been derived from the Federal Constitution, the right to resort to the Federal courts is a creation of the Constitution of the United States and the statutes passed in pursuance thereof."

Under the influence of the decision of the Supreme Court of the United States in this case, I feel constrained to hold that section 3654 of the Code is unconstitutional and void, and violative of the Federal Constitution as applied to those foreign corporations which entered the State of Alabama in accordance with its laws prior to March 4th, 1907, the date of the passage of the Act of Alabama Codified as section 3654 of the Code, and had acquired previous to such date, valuable vested property rights in the transaction of its intra-state business.

It is my opinion, therefore, that you and the Clerks of the State Courts should disregard the provisions of section 3654 of the Code of Alabama and take no action thereunder looking to the cancellation of the permit of a foreign corporation upon the removal by such corporation of a case from a State Court to a Federal Court, when the foreign corporation falls within the class of foreign corporations above defined.

You should have no trouble in ascertaining the foreign corporations which are affected by this opinion. In cases of doubt, the Clerk of the State Court, before making certificate as required by the statute, should report the case to you, and the records of your office, in the first place will show when the foreign corporation entered the State to do business, and the other data with respect to the property holdings of the corporation will be easily ascertainable either through the Auditor's office or the office of the County Tax Assessor.

The attention of the Legislature should be called to this opinion in order that it may take such action with reference to this statute as it may deem advisable. For the reasons stated herein, it is my judgment that the statute should be repealed.

Yours very truly,
ALEX. M. GARBER,
Attorney General.

**RIGHT TO CLAIM A REFUND OF TAXES—CLAIM MUST BE
MADE WITHIN FOUR YEARS.**

Sept. 15, 1910.

Hon. W. W. Brandon,
State Auditor,
Capitol.

Dear Sir:—

Sometime ago you requested an opinion from me in regard to the claim of J. W. Emens, as administrator of the estate of Bettie Crutchfield for taxes for the years 1904, 1905, 1906, 1907, and 1908, paid to the Tax Collector of Morgan Co. for the State of Ala., through the error or mistake in the assessment of taxes for those years. This claim was refused by you as to the years 1904 and 1905 under section 2343 and 2344 of the Code of 1907. The petitioner insists that under the act of Sept. 29, 1903, that the statute of limitations for filing such petition is six years, and that the taxes having been paid prior to the adoption of the Code of 1907, that the said Act of 1903 would be in effect as to all taxes paid prior to the adoption of said Code.

After investigating this matter I am of the opinion that your position is a correct one, and that the adoption of the Code amends the Act of Sept. 1903 to such an extent that the statute of limitations is changed from a period of six years, and that this amendment is retroactive is clear from the reading of section 2343. That the Legislature has the right to alter the statute of limitations as affecting claims already in existence cannot be doubted. The authorities are almost uniform in holding that the Legislature may alter or change the period during which claims may be filed.

Henry v. Thorpe, 14 Ala. 103;
Martin v. Martin, 53 Ala. 567;
19 Am. & Eng. Enc. of Law, 167; 25 Cyc. 986 et seq.

Moreover, it is clear that without some enactment by the Legislature there is no right on the part of the petitioner to have the taxes claimed refunded to him, and that this privilege

is a concession on the part of the State and one that might be amended or even repealed at the pleasure of the Legislature of Alabama.

I beg, also, to call your attention to the fact that the petition in this case does not comply with the requirements of sections 2341 and 2342 of the Code, in that the certificate in this case is not signed by the Probate Judge, as such officer, as is required by the above mentioned section.

I herewith return the papers handed to me with your request for an opinion in this matter.

Yours very truly,
ALEX. M. GARBER,
Attorney General.

**BANKS—\$15,000 MINIMUM CAPITAL STOCK FOR BANKS IN
TOWNS OF LESS THAN 2,500 INHABITANTS.**

Sept. 16, 1910.

Hon. Walter D. Seed,
State Treasurer,
Capitol.

Dear Sir:—

Sometime ago I received a communication from you calling my attention to the provision in subdivision 4 of section 3446 of the Code, requiring that a corporation formed for the purpose of carrying on the business of banking shall begin business in no case with less than a capital stock of \$25,000.00, and section 3542 of the Code which places a minimum of capital of a bank doing business in this State in towns of less than twenty-five hundred inhabitants at not less than \$15,000.-00. Your inquiry is directed at the apparent conflict between these two sections of the Code, and my opinion is requested thereon.

You will observe from an examination of the marginal citation in the Code that section 3446 was transcribed from an Act of the Legislature, approved Oct. 2, 1903, and section 3542 from an Act of the Legislature, approved Oct. 10, 1903. The latter section codified from a later statute, under a con-

struction adopted in a number of cases by our Supreme Court, must be construed to modify and amend section 3446 with respect to the particular class of banks referred to, to such an extent as may be necessary to remove conflict or repugnancy between the provisions of the two statutes.

The following cases are cited in support of this rule of construction of statutes transcribed or codified into the Code from enactments of the Legislature of different dates,—

Steel v. State, 61 Ala. 213;
Gunter v. State, 83 Ala. 96;
Zaner v. State, 90 Ala. 651;
Calhoun County v. Watson, 152 Ala. 554.

It follows, therefore, that the provision found in section 3452 fixing the minimum capital of a bank doing business in a town of less than twenty-five hundred inhabitants must prevail. If the two sections of the Code are incompatible, effect can be only given to one. Under the rule of construction laid down, priority must be accorded to section 3542 on the point involved, which was enacted subsequent to the enactment of section 3446.

In the above I have not passed upon the question of the probable conflict between sections 3446 and 3447 and section 3542 as to the amount of *capital stock* required of a bank doing business in a town of less than twenty-five hundred inhabitants. If section 3542 authorizes in such instance only \$15,000.00 *capital actually paid* for permanently doing the banking business, it may be urged with some force that the minimum of *capital stock* should likewise be \$15,000.00 fully paid up. It will also be observed that the requirement of \$25,000.00 actually paid capital by banks located in towns of over twenty-five hundred inhabitants is more clearly in conflict with the provision of section 3446 allowing sixty per cent. of the *capital stock* of \$25,000.00 to be actually paid up in cash, while under the later statute, section 3542, a bank with \$25,000.00 capital stock, doing business in a town of over 2500 inhabitants must actually pay up in cash the entire amount of its capital stock.

Very truly yours,
ALEX. M. GARBER,
Attorney General.

**LIVE STOCK SANITARY BOARD NOT AUTHORIZED TO
EMPLOY ATTORNEY.**

Sept. 21, 1910.

Hon. J. A. Wilkinson,
Commissioner of Agriculture and Industries,
Capitol.

Dear Sir:—

I have your letter of the 12th instant enclosing letter from Dr. C. A. Cary, State Veterinarian, and you desire to be advised whether under section 767 of the Code an attorney's fee is a proper item of expense to be paid under the authority of that section.

After investigation I am unable to agree with Dr. Cary that this section is authority for incurring such expense. Under the law of the State the solicitors of the criminal courts are required to prosecute such cases as the violation of the Live Stock Sanitary Laws, and in the absence of express statutory authority in the statute, I do not think the Legislature intended that the Live Stock Sanitary Board should make special employment of attorneys to assist in such prosecutions.

I herewith return Dr. Cary's letter.

Yours very truly,
ALEX. M. GARBER,
Attorney General.

**IN RE FRANCHISE TAX ON FOREIGN CORPORATIONS—
PRIVILEGE TAXES ON DOMESTIC CORPORATIONS.**

Sept. 30, 1910.

Hon. W. W. Brandon,
State Auditor,
Capitol.

Dear Sir:—

I have your inquiry regarding the status of the various foreign corporations doing business in Alabama in respect to their liability for the annual franchise tax for the year 1911 as required by sections 2391 and 2392 of the Code.

The recent decision of the Supreme Court of the United States on this subject in the case of the Southern Railway Company v. Greene, 216 U. S. 400, and a decision of more recent date by the Supreme Court of Alabama in the case of Chinnabee Cotton Mills v. The State, 52 So. Repr. 390, relating to the liability of a domestic corporation transacting business in Alabama, for the tax imposed under subdivision 26 of section 2361 of the Code, suggest that I briefly review the history of the statutes under which foreign and domestic corporations were required to pay the taxes in question, and also the changes adopted by the Legislature in 1907, which appear in the present Code.

The revenue law in the Code of 1896 in subdivision 55 of section 4122 provided that "all corporations doing business in this State, *whether organized in this State or another State or county*, not specifically required to pay a license tax, shall pay annually the following privilege taxes, etc.," the tax being graded in proportion to the amount of capital stock. This section of the Code of 1896, was amended by the Act of March 5th, 1901, but only with respect to the amount of the tax. The present statute, contained in subdivision 26 of section 2361, is identical with that of the Code of 1896 as amended in March 1901 with the one exception, that it has application only to "corporations organized under the laws of this State and doing business in this State." Foreign corporations were taken out of the operation of the statute of 1896 because the amount of the privilege or franchise tax here required was in proportion to the amount of the capital stock, leaving the present statute, as above stated, operative only as to domestic corporations. This was in obedience to the mandate of section 229 of the new Constitution, (approved Nov. 28, 1901) which directed the Legislature to provide for a tax on domestic corporations based on "the amount of capital stock." Section 232 of the new Constitution at the same time required the Legislature to enact a general law providing the payment of a franchise tax by foreign corporations "based on the actual amount of capital employed in this State."

Thus it was that under subdivision 55 of section 4122 of the Code of 1896, originally applicable to both domestic and foreign corporations, as amended subsequent to the ratification of the new Constitution came only to apply to domes-

tic corporations on the *capital-stock* basis, as it appears now in subdivision 26 of section 2361 of the Code. Foreign corporations, on the other hand, were subjected, under section 2391 and 2392 of the Code, (Codified from the Act of March 7, 1907) to a franchise tax on the *actual employed capital basis*.

There was a marked difference in the amount of the tax under these statutes as applied respectively to domestic railroad corporations and to foreign railroad corporations. Several of the class last mentioned attacked in the courts the validity of the provisions of the Act of March, 1907, Codified as sections 2391 to 2400, inclusive, in the Code, upon several grounds, among these, that the provisions of said Act violated the Fourteenth Amendment of the Constitution, in that it denied to them the equal protection of the laws and deprived them of their property without due process of law. These suits, first instituted in the State Courts, finally reached the Supreme Court of the United States, where the contention of the foreign railroad corporations was sustained and the provisions of the Act of March 1907 were held repugnant to the Constitution of the United States and void as applicable to such corporations. *So. Ry. Co. v. Greene*, supra. (See also *Western Union Tel. Co. v. Kansas*, 216 U. S. 1). The Federal Supreme Court took the position that these cases did not involve determining how far a State may arbitrarily exclude a foreign corporation, but to what extent a State, after allowing a foreign corporation to come in and acquire property, may tax such foreign corporation which has lawfully acquired a large amount of permanent and valuable property therein by a discriminating method not employed as to domestic corporations of the same kind, carrying on a precisely similar business.

The conclusion reached by this court was that these foreign corporations, which here assailed the above Act, were, within the meaning of the Fourteenth Amendment, persons within the jurisdiction of the State of Alabama and, therefore, entitled to be protected against any statute of the State which deprived them of the equal protection of the laws; and that being in a position to invoke the protection of said amendment, the franchise tax imposed upon them under the provisions of said Act by a different and more onerous rule than that used in taxing domestic corporations for the same privilege, both

taxes being upon the same species of property or subjects of taxation, was a denial of the equal protection of the laws and in conflict with the Federal Constitution.

After a careful consideration of the opinion of the Supreme Court of the United States in these cases, it is my opinion that the principles declared therein are applicable to all foreign corporations which had prior to March 7th, 1907, been admitted into the State of Alabama, in compliance with the laws of the State and had lawfully acquired valuable property therein. Under this construction, the tax required under sections 2391 and 2392 cannot be exacted for the year 1911 from any foreign corporation which had come into and was doing business within the State prior to March 7th, 1907, with the permission of the State, and under the sanction of its laws, and had acquired valuable property and had established therein a domestic business; and I advise you to so notify the different Judges of Probate. To require the payment of this tax from foreign corporations which have been admitted to do business within the State subsequent to March 7th, 1907, would be within itself the institution of a discrimination against such corporations and in conflict with the reasonable interpretation of the principles announced by the Supreme Court of the United States; and I, therefore, advise that this tax should not be collected from them for the year 1911. It follows as a result of the striking down of sections 2391 and 2392 of the Code upon the grounds heretofore stated, that there is no law under which a foreign corporation transacting business in the State of Alabama can be required to pay a franchise tax of the character in question. This situation should be called to the attention of the Legislature as soon as it convenes in January 1911 in order that an Act may be passed imposing upon such corporations a fair and reasonable tax applicable as well to domestic corporations doing business in the State.

The attention of the Legislature should also be directed to the effect of the opinion of the Supreme Court of Alabama in the case of the Chinnabee Cotton Mills v. the State, *supra*, in which the court held that a domestic corporation which has paid a license for transacting a particular business is not required to pay a privilege tax under subdivision 26 of section

2361. The effect of this decision is to render the latter statute practically inoperative as applied to domestic corporations.

You will thus observe that the net result leaves both domestic corporations and foreign corporations untaxed in this particular respect for the year 1911 until the Legislature enacts a law providing a franchise or privilege tax to be imposed upon both classes of corporations.

I remain,

Very truly yours,
ALEX. M. GARBER,
Attorney General.

**ATTORNEY GENERAL'S DUTY TO ACT IN PROHIBITION
CASES ARISES ONLY UPON REFUSAL OF LOCAL
SOLICITOR TO ACT, AND UPON DEMAND
OF THE GOVERNOR.**

Oct. 11, 1910.

Hon. B. B. Comer,
Governor of Alabama,
Capitol.

Dear Sir:—

Referring to our discussion regarding the institution of proceedings in equity for the abatement of certain nuisances named in section 19 of the Act "To further surpress the evils of intemperance, etc." approved August 25th, 1909, commonly known as the "Fuller Bill," I beg to state that I have advised, on several occasions, persons seeking the institution of such proceedings, that I considered it the duty primarily of the local prosecuting officer in whose territory the case arises, to begin and conduct such proceedings. Section 20 of the above act authorizes the filing of the bill in the name of the State of Alabama, in the court possessing equity jurisdiction in the county where the alleged nuisance exists by "the State Attorney General, or the Circuit or other solicitor, or Deputy Solicitor, or any prosecuting officer within a county where his official duties require him to prosecute criminal cases on behalf of the State." When a bill of this character is filed by one of

the above mentioned officers no bond is required as a condition precedent to the issuance of a preliminary injunction. I have further stated that I would join the local prosecuting officer whenever he requested it and sign my name as Attorney General to the bill or petition provided by the statute.

Unless the local Solicitor co-operates with me, I am unwilling to assume the task of instituting these statutory proceedings wherever they may arise in the various counties of the State for two reasons; first, because, in my judgment, such duty devolves directly upon the local prosecuting officer and, second, because it would be impracticable, and in many cases impossible, for me to conduct properly such proceedings from my office in the State Capitol.

When it has been reported to me that the local prosecuting officer has refused to institute such proceedings, I have in this connection still further stated that if such solicitor, when called upon by the Governor to investigate and institute such proceedings, refused to do so, upon the filing by the Governor in this Department the record of such solicitor's official refusal, that I would in those instances take the matter up directly from this office, even though such a precedent might result in the employment of a large force of additional assistants to examine into the cases as they arose and conduct the same to a final conclusion. It would be necessary for this Department to exercise direct and immediate supervision of such proceedings. In my judgment the law contemplates that the local solicitor shall exercise such supervision. In no event would it be wise to delegate the practical execution of this statute to third parties.

I am,

Very truly yours,
ALEX. M. GARBER,
Attorney General.

**IN RE DEPOSIT OF FUNDS IN THE FEDERAL COURT TO
MEET CURRENT EXPENSES OF THE RAILROAD
RATE LITIGATION.**

Nov. 2, 1910.

Hon. B. B. Comer,
Governor of Alabama,
Capitol.

Dear Sir:—

Heretofore the following amounts have been deposited by the State in the registry of the United States Circuit Court for the Northern Division of the Middle District of Alabama to meet the current expenses incident to the two references ordered by the Court in the five contested railroad rate cases:—

On Dec., 1909, in the case of L. & N. R. R. Co.	\$ 600.00
On April, 1910, in the case of L. & N. R. R. Co.	600.00
On June, 1910, in the case of L. & N. R. R. Co.	1,500.00
Total to date,	\$ 2,700.00

On Dec., 1909, in the case of S. & N. Ala. R. R. Co.	600.00
On April, 1910, in the case of S. & N. Ala. R. R. Co.	600.00
On June, 1910, in case of S. & N. Ala. R. R. Co.	1,500.00
Total to date,	\$ 2,700.00

On Dec., 1909, in the case of Central of Ga. R. R. Co.	600.00
On April, 1910, in the case of Central of Ga. R. R. Co.	600.00
On June, 1910, in the case of Central of Ga. R. R. Co.	1,500.00
Total to date,	\$ 2,700.00

On Dec.-----, 1909, in the case of Western Ry. of Ala.-----	600.00
On April-----, 1910, in the case of Western Ry. of Ala.-----	600.00
Total to date,-----	\$ 1,200.00
On Dec.-----, 1909, in case of N. C. & St. L.---	600.00
On April-----, 1910, in case of N. C. & St L.---	600.00
Total to date,-----	\$ 1,200.00
Total deposited in the five cases to date---	\$ 10,500.00

The complainant railroad company in each case has also deposited in the registry of said Court an amount equal to the deposits of the State for the purposes named, the total deposits of said railroad companies to date being \$10,500.00. This makes a deposit to date by both complainants and defendants of \$21,000.00.

I am advised by Hon. Thomas G. Jones, Judge of the Circuit Court of the United States for the Northern Division of the Middle District of Alabama that the last deposits made by the parties to the litigation has been exhausted. I have been served with a certified copy of the order made on the 1st day of November, 1910, by Judge Jones in the following cases:

L. & N. R. R. Co. v. R. R. Comr. of Ala., et al;
 South & North R. R. Co. v. R. R. Comr. of Ala., et al.
 Central of Ga. R. R. Co. v. R. R. Comr. of Ala., et al.
 N. C. & St. L. R. R. Co. v. R. R. Comr. of Ala., et al.

The order in each of the above cases decrees that "The fund heretofore paid into the court for the expenses of the reference in this case, under former orders, being exhausted, it is therefore Ordered, Adjudged and Decreed by the Court that the complainant and defendant each pay into the registry of the court on or before the 3rd day of November, 1910, the sum of One Thousand (\$1,000.00) Dollars each, for which the

Clerk will give proper receipt, which said amount shall be deposited in the registry of the court subject to its further order."

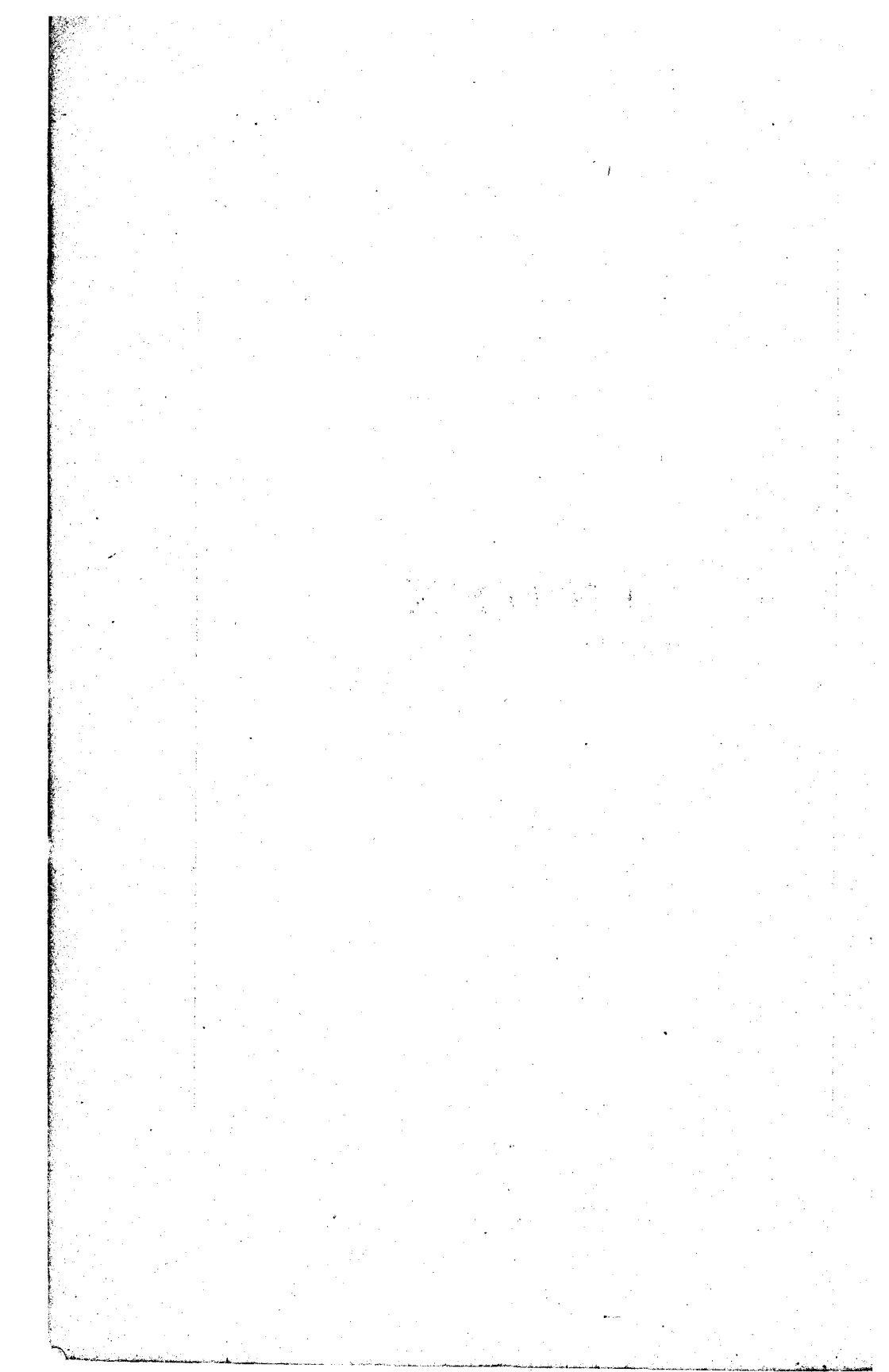
For the purpose of complying with the decree of the court in each of the above cases, I request that you direct a warrant to be drawn in my favor as Attorney General for the sum of Four Thousand (4,000.00) Dollars, being One Thousand (\$1,000.00) Dollars in each of the causes named, to be deposited by me with the Clerk of said court as required by said order. This sum will be deposited by me with the Clerk of the United States Circuit Court for the Northern Division of the Middle District of Alabama, as in previous instances and receipt taken therefor.

I remain,

Very truly yours,
ALEX. M. GARBER,
Attorney General.

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